

The Gazette



of India

PUBLISHED BY AUTHORITY

No. 52] NEW DELHI, SATURDAY, DECEMBER 26, 1964/PAUSA 5, 1886

Separate paging is given to this Part in order that it may be filed
as a separate compilation

NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 14th December, 1964:—

Issue No.	No. and Date	Issued by	Subject
311	S.O. 4233, dated 10th December, 1964.	Ministry of Commerce.	Further amendments to the Exports (Control) Order, 1962.
312	S.O. 4234, dated 14th December, 1964.	Do.	Further amendments to the Exports (Control) Order, 1962.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

PART II—Section 3—Sub-section (ii)

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

ELECTION COMMISSION, INDIA

New Delhi, the 10th December 1964

S.O. 4305.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the order pronounced on the 23rd November, 1964, by the Election Tribunal, Cuttack.

IN THE ELECTION TRIBUNAL AT CUTTACK

PRESENT:**Sri S. K. Sen, I.C.S. (Retd.)—Member***The 23rd November, 1964*

ELECTION PETITION NO. 1 OF 1962

Surendra Mohanty—Petitioner*Versus***Surendranath Dwivedy—Respondent**

ELECTION PETITION NO. 54 OF 1964

Banbehari Mohanty—Petitioner*Versus***Surendranath Dwivedy & Surendra Mohanty—Respondents****In Election Petition No. 1/62****For the petitioner in Election Petition No. 1/62.—**

1. Ranjit Mohanty, Bar-at-law.
2. Sarat Chandra Ghose, Advocate.
3. Bipin Behari Mohanty.

For the respondent—

1. N. C. Chatterji (Bar-at-law).
2. Asok Das, Advocate.
3. Srinibas Misra (L).
4. S. K. Kundu.
5. Govind Das, Bar-at-law.
6. L. Rath.
7. Srinibas Misra (G).
8. Bipin Behari Rath.
9. J. Brahma.

In Election Petition No. 54/62.**For the petitioner—**

1. R. K. Kar.
2. S. N. Mitra.
3. B. K. Ray.

For respondent No. 1—

1. Govind Das, Bar-at-law
2. Asok Das.
3. L. Rath.
4. Bipin Behari Rath.
5. S. K. Kundu.

For respondent No. 2—

1. Ranjit Mohanty, Bar-at-law.

JUDGMENT

These two cases arise out of two election petitions challenging the election of the same candidate, Surendranath Dwivedy, at Kendrapara Parliamentary Constituency within the district of Cuttack at the last general election held in February, 1962. There were only two candidates contesting the election to the Lok Sabha at Kendrapara Parliamentary Constituency, namely, Surendra Mohanty belonging to the Congress party and Surendra Nath Dwivedy belonging to the Praja Socialist Party. Surendra Nath Dwivedy was the sitting member of the Lok Sabha from Kendrapara, having been elected in 1957 as a member of the Praja Socialist Party.

Surendra Mohanty was also a sitting member of the Lok Sabha, but he had been elected in 1957 from another constituency, viz. Dhenkanal, as a member of the Ganatantra Party. Sometime after his election in 1957, Surendra Mohanty accepted appointment as a highly paid officer under one of the firms under the control of Bhojananda Patnaik who was for some time the Chief Minister of Orissa and President of Utkal Provincial Congress Committee; and he ceased to be a member of the Ganatantra Party and joined the Congress Party.

Kendrapara Parliamentary Constituency consists of seven Assembly Constituency areas, but at the general election in 1962, there was election only to the Parliamentary seats in Orissa; a general election had already been held for Orissa Legislative Assembly in June-July, 1961, referred to by some witnesses as the Mid-term Assembly Election. In respect of the Parliamentary election of 1962 different dates for polling were fixed in the different Assembly Constituency areas by a notification published by the Chief Electoral Officer, Orissa, in the Orissa Gazette of January 30, 1962. The names and numbers of the Assembly Constituencies and the different dates fixed for polling appear from the following table:

- 104 Mahanga—25-2-62
- 105 Salepur—21-2-62
- 107 Ersama—21-2-62
- 108 Tirtol—23-2-62
- 109 Patkura—21-2-62
- 110 Rajnagar—23-2-62
- 112 Kendrapara—23-2-62.

Polling was held accordingly in each Assembly Constituency. For convenience of voting by the electors a large number of booths or polling stations was set up in each Assembly Constituency, the number of polling stations being as follows:

- 104 Mahanga—69
- 105 Salepur—71
- 107 Ersama—71
- 108 Tirtol—60
- 109 Patkura—56
- 110 Rajnagar—69
- 112 Kendrapara—77

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The counting of votes took place on two days i.e. 26th and 27th of February, 1962. Counting was held at two places on each of these two days, namely, at the Counting Hall within the office premises of the Subdivisional Officer, Kendrapara, described by some witnesses as the Election Hall, and at the Municipal Hall of Kendrapara situated at a short distance from the Subdivisional Office premises. On completing the counting it was found that Surendranath Dwivedy had received 99,391 votes and Surendra Mohanty had received 99,325 votes, while 91,36 votes were rejected. Surendranath Dwivedy thus won by a narrow margin of 66 votes, and the result was declared in the evening of 27th February, 1962 by P. R. Chandra, Additional District Magistrate, Cuttack, as Assistant Returning Officer who had been authorised by the District Magistrate, who was the Returning Officer, to declare the result of the Parliamentary election at Kendrapara.

Even before the result had been declared. Surendranath Dwivedy sent a telegram to the Election Commission of India, alleging that when after counting ballot papers in the ballot boxes it had been found that he was leading by 81 votes, and only 30 postal ballot papers remained to be counted, the Assistant Returning Officers had absented themselves for about an hour from the Counting Hall, attending to telephone calls from the Chief Minister; and that he apprehended manipulation of the ballot papers to defeat him; he requested the taking of immediate action by the Election Commission (Ex. AA). Even after the result in his favour had been declared by the Assistant Returning Officer, P. R. Chandra, Surendranath Dwivedy sent another telegram to the Election Commission on 1st March 1962, alleging that after the declaration of the result the Government was making feverish efforts to tamper with the ballot boxes and ballot papers, and praying that Election Commission take charge of the ballot boxes and the ballot papers (Ex. AA). Surendra Mohanty also sent some telegrams to the Election Commission. On 28th February 1962 he sent a telegram alleging that the Assistant Returning Officer had first announced that he (Surendra Mohanty) had obtained a lead of 212 votes, but immediately thereafter the Assistant Returning Officer was closetted

with Surendranath Dwivedy and an unauthorised horde of his supporters and was prevailed upon to recalculate the figures, and then the Assistant Returning Officer had announced that Dwivedy had obtained a lead of 66 votes and had declared the result without passing any order on two petitions for recounting which had been filed by Surendra Mohanty (Ex. VIII). On 2nd March, 1962 Surendra Mohanty sent another telegram to the Election Commission complaining that many irregularities had been committed in counting the votes, that votes in favour of the Congress candidate had been wrongly counted in favour of the P.S.P. candidate, that votes cast in favour of the Congress candidate had been wrongly rejected and that in similar circumstances votes had been taken as valid votes in favour of the P.S.P. candidate, Surendra Mohanty sought immediate intervention of the Election Commission (Ex. IX). He also filed a writ petition before the Orissa High Court on 28th February, 1962 for an injunction directing the Returning Officer to recount the ballot papers, but this writ petition was summarily dismissed on 2nd March, 1962.

The Election Commission on receiving the telegrams called for a report from the District Magistrate, Cuttack who was the Returning Officer for the Parliamentary Constituencies in the district of Cuttack. The District Magistrate after obtaining a report from the Assistant Returning Officer, P. R. Chandra, submitted a report to the Election Commission in the form of a Confidential letter dated 8th March, 1962 (Ex. CC). The Election Commission passed an order on the 9th March, 1962 (Ex. E) directing that the Chief Electoral Officer, Orissa, to take charge of the used ballot papers of Kendrapara Parliamentary Constituency and other papers relating to that Constituency, and keep them in safe custody. The District Magistrate, Cuttack had already taken charge of the used ballot papers of the constituency, and had the eight steel boxes or containers containing them transferred from Kendrapara Sub-Treasury to Cuttack Treasury Strong Room. The Chief Electoral Officer, Orissa, on receipt of the Election Commission's order, put his own seals on the containers and directed that they should be kept in the Treasury Strong Room at Cuttack. He took charge of other election papers from Kendrapara Sub-Treasury and had them placed in the Treasury Strong Room at Cuttack.

In the meantime Surendra Mohanty filed an election petition under section 81 of the Representation of the People Act 1951. This petition was filed before the Election Commission on 6th March, 1962 and published in the Gazette of India on March 17, 1962. Case No. 1 of 1962 is based on this election petition. A second Election petition was filed by Banbehari Mohanty, who described himself as an elector of the Kendrapara Parliamentary Constituency, on 9th April, 1962; and this election petition was published in the Gazette of India on April 21, 1962. Case No. 54 of 1962 is based on this election petition. These two Election Petitions were referred for a joint trial to an Election Tribunal appointed for the purpose. Mr. Brij Mohan Lal was the first Member of this Election Tribunal and took charge on 1st April, 1962; he resigned at the end of February, 1963. Thereafter Mr. D. N. Roy was appointed as a Member of the Tribunal and he took charge on 6th May, 1963 and worked till 2nd April, 1964 when he resigned on account of his ill health. Thereafter on being appointed as member of the Election Tribunal, I took charge on 4th August, 1964.

In his election petition Surendra Mohanty made the prayers that the election petition be referred to an Election Tribunal and that the Tribunal may declare the election of the returned candidate, Surendranath Dwivedy, as void after recounting of votes, and declare the petitioner Surendra Mohanty to be duly elected to the Parliamentary constituency of Kendrapara. The petitioner averred that he had been given notice that the counting of ballot papers would take place in the premises of the office of the Subdivisional Officer, Kendrapara, but the counting took place in one room of the office of the Subdivisional Officer, Kendrapara, and at a different place outside the office of the Subdivisional Officer, namely in the Municipal Hall of Kendrapara, and that the counting in the Municipal Hall was unauthorised and the petitioner had been prejudiced as it was not possible for him to keep himself in touch at the two places to keep watch over the counting. The petitioner also averred that there were some counting clerks who had definite bias against the petitioner and who deliberately resorted to mal practices. The petitioner mentioned that from one ballot box 300 and odd valid votes had come out in favour of the petitioner and 100 and odd valid votes had come out in favour of Surendranath Dwivedy, but in Form 20, 300 and odd valid votes had been recorded in the name of Surendranath Dwivedy and 100 and odd valid votes in the name of the petitioner; and that a Counting Agent of the petitioner, Pursottam Naik pointed out the wrong recording, and the Assistant Returning Officer after checking the ballot papers corrected the record after nearly one hour. The petitioner averred that such wrong recording must have been done in other cases which remained undetected.

The petitioner further averred that after counting was completed it was announced that the petitioner had won by 212 votes and the news had been flashed to different news agencies and that thereafter the congress supporters left the place in jubilation; and thereafter a large number of unauthorised persons under the leadership of Surendranath Dwivedy marched up to the chamber of the Subdivisional Officer where P. R. Chandra, the Assistant Returning Officer was sitting; that P. R. Chandra and the Sub-divisional Officer, Kendrapara shut the door of the chamber and discussed something, but the P.S.P. supporters banged the door leaves of the chamber and made a violent noise; and when the door of the chamber was opened, P. R. Chandra was almost bodily lifted to the Counting Hall where he was made to sign the announcement and the declaration that Surendra Dwivedy had won by 66 votes, without affording a reasonable opportunity to the petitioner for asking for a recount and without passing any order on two petitions filed on behalf of the petitioner for recount in complete disregard of rule 63 of the Conduct of Election Rules. The petitioner also averred that he believed that P. R. Chandra had subsequently made some attempts to regularise his illegal action by writing some orders subsequent to the declaration. The petitioner stated that he was confident that if there had been a recount he would have been found to have won by a few thousand votes.

Substantially, therefore, the petitioner claimed that the result of the election had been materially affected by non-compliance with the provisions of the Conduct of Election Rules, particularly rule 63, and that therefore the election was void under section 100 sub-section (1) clause (d) sub-clause (iv) of the Representation of the People Act 1951. He claimed recount of votes and asserted that he was confident that he would be found on the recount to have obtained a majority of valid votes. He also claimed to declare as duly elected.

The respondent, Surendranath Dwivedy, filed a recrimination under section 97 of the Representation of the People Act 1951 (hereinafter called the Act) on 18th April, 1962 and he filed his written statement on 2nd June, 1962. In the statement and particulars required under section 97 of the Act, the respondent alleged that Surendra Mohanty who was the candidate on behalf of the Congress party had committed extensive bribery and exercised undue influence through the length and breadth of the constituency during the period before polling, and that he had done so in collusion with Bijoyananda Patnaik, the then Congress Chief both in the Legislature and the Party, and Biren Mitra, the then Deputy Chief Minister of Orissa, and that even if the petitioner had been elected his election would have been void on account of such corrupt practice. Particulars of such corrupt practice were furnished in paragraphs 8 to 14 of the statement and particulars under section 97 of the Act. It is not necessary to specify them here as they will appear sufficiently from the issues and discussion of the issues. In the recrimination the respondent, Surendranath Dwivedy, also challenged the claim of the petitioner Surendra Mohanty that on a recount of votes the petitioner would be found to have won by several thousand valid votes. The respondent stated in paragraph 16 of his statement under section 97 that if votes of both the candidates are scrutinised by the same standard, whatever standard be applied the petitioner would never be found to have got a majority of valid votes. The recrimination, therefore, falls under two broad heads, namely that even if the petitioner were elected his election would be void on account of corrupt practice; and if votes of both the parties are scrutinised by the same standard, the respondent will always be found to have got a majority of votes.

In his written statement the respondent claimed that the election petition did not disclose any cause of action. He averred that the Returning Officer duly notified on 10th February, 1962 that the counting would take place at two places namely, the premises of the Sub-divisional Officer's office building, Kendrapara, and the Municipal Hall, and that it was not correct that the counting in the Municipal Hall was unauthorised. The respondent denied that any of the Counting staff showed any bias for or against any of the candidates. He averred that the mistake in recording the number of votes obtained by the two candidates in a particular polling station was inadvertent, and that the mistake was rectified as soon as it was pointed out, and that this showed the *bona fide* character of the work of the Counting authorities, and that there was no reason whatever to think that such mis-recording had been made and gone undetected in respect of any other polling station, for there were Counting Agents of both parties present at both the places of Counting to check and point out such mistakes if any. The respondent denied that it had ever been announced that the petitioner had won by 212 votes, and claimed that there was therefore no reason for the Congress supporters to leave the place in jubilation. The respondent denied that Surendranath Dwivedy or his supporters had rushed into the Counting Hall or upto the chamber of the Subdivisional Officer and banged at the door of his chamber or that P. R. Chandra had been almost bodily lifted and taken to the

place of counting and made to sign an announcement or declaration in favour of the respondent or that P. R. Chandra had given no reasonable opportunity to ask for a recount. The respondent claimed that the provisions of rule 63 and other rules of the Conduct of Election Rules had been duly complied with and that there was therefore no occasion for the prayer for a recount of the votes. The respondent averred that such prayer for recount by a Tribunal was not authorised by the law. The respondent prayed that the election petition should be dismissed with costs.

After hearing both the sides the following issues were framed by the Tribunal on 9th June, 1962.

1. Whether the announcement made under rule 63(1) of the Conduct of Election Rules 1961 was in petitioner's favour?

2. Whether force was used by the respondent or his companions and whether Mr. P. R. Chandra, Assistant Returning Officer was coerced to prepare false record declaring the respondent elected?

3. Whether applications for recounting had been made by the petitioner? Did they remain undisposed of?

4. Whether the provisions of Rules 63 have been contravened?

5. Whether the Tribunal is incompetent to recount the votes?

6. Whether petition does not make out a *prima facie* case?

7. Whether recriminations filed under section 97 were beyond limitation?

8. Whether the petitioner was guilty of various acts of bribery mentioned in para 8 of the recriminations?

9. Whether the petitioner was guilty of various acts of undue influence mentioned in para 9 of the recriminations?

10. Whether the vehicles mentioned in para 11 of the recriminations were hired or procured in manner prohibited by law?

11. Whether the petitioner engaged workers who were paid something as their remuneration beyond their actual expenses? Did that act amount to corrupt practice?

12. Whether items of expenditure which should have been included in the petitioner's Return of Election expenses have been omitted therefrom? If so, how does that affect the case?

13. Whether the total amount incurred or authorised by the petitioner exceeds the prescribed maximum of Rs. 25,000.

14. Whether the petitioner took the help of Block Development Officers as mentioned in para 14 of the recriminations?

15. Whether Government machinery was utilised in favour of the petitioner to help him in his election campaign?

16. Whether the respondent's election is liable to be set aside?

17. Whether the petitioner is entitled to be declared elected?

After the issues had been framed, the respondent Surendranath Dwivedy filed a petition on 30th June, 1962, praying that notices be issued to Bijoyananda Patnaik and Biren Mitra under section 99 of the Act, so that a finding as to corrupt practice might be recorded against them if proved by evidence. This application was rejected as premature by an order of the Tribunal dated 7th July, 1962. The respondent moved the High Court against that order, but the motion was rejected. It may be mentioned here that such a prayer for giving notice to Bijoyananda Patnaik and Biren Mitra was repeated before me on 15th September, 1964 after recording of evidence was nearly complete, and this prayer was rejected by me by an order dated 25th September, 1964.

On 7th July, 1962 the petitioner Surendra Mohanty filed an application for amendment of paragraph 13 of his election petition by adding the averment that a large number of votes which were cast in favour of the petitioner were illegally rejected or counted in favour of the respondent and a large number of votes were illegally and improperly counted in favour of the respondent; that numerous ballot papers which bore marks by which the electors could be identified and ballot

papers on which no votes were recorded and ballot papers in which votes were given for more than one candidate, and damaged or mutilated ballot papers were counted in favour of Surendranath Dwivedy, and this had materially affected the result of the election. On the same date i.e., 7th July, 1962, the petitioner also filed an application for permission to inspect the used ballot papers. The application for amendment of para 13 of the election petition was rejected by the Tribunal by its order dated 14th July, 1962, with the observation that the allegations sought to be added by the amendment had not been made in the original election petition, and that they would be entirely new grounds of attack and would change the nature of the case. In the meantime such allegations had been made in the election petition filed by Banbehari Mohanty. The Tribunal in its order dated 14th July, 1962 mentioned that fact, but observed that that was no reason why similar grounds of attacks should be permitted to be added to Surendra Mohanty's election petition. The application for inspection of ballot papers by the petitioner Surendra Mohanty was also rejected by an order of the Tribunal dated 18th August, 1962.

The petitioner of the second election petition is Banbehari Mohanty. In his election petition he repeated the averments made by Surendra Mohanty in the latter's election petition. In addition Banbehari Mohanty took the grounds that numerous ballot papers were illegally and improperly accepted in favour of Surendranath Dwivedy in contravention of rule 56 sub-rule (2) of the Conduct of Election Rules, whereas under similar circumstances votes cast in favour of Surendra Mohanty were rejected; and that before rejection of ballot papers the Counting Agents of Surendra Mohanty were not given reasonable opportunity to inspect them, and the grounds of rejection were not recorded on the ballot papers by the Returning Officer. In addition, this petitioner made certain allegations of corrupt practices against the returned candidate Surendranath Dwivedy e.g. that bullock carts were hired by Surendranath Dwivedy or with his consent by his agents for carrying electors to some polling booths; that Surendranath Dwivedy or with his consent his agents committed certain acts of bribery; that the services of a Government servant Jadunath Kar were utilised for his election propaganda; that a polling agent of Surendranath Dwivedy was allowed to perform the functions of the Polling Officer in the Balisahi booth of Salepur constituency; that votes were recorded at Ranigada booth of Mahanga constituency even after the closing hours and so on. It is not necessary to give further details of these allegations, as they will appear from the issues, and the discussion thereof; and most of these allegations were not pressed at the hearing. This petitioner also averred that P. R. Chandra had not been validly appointed as Assistant Returning Officer and that he had not counted all the postal ballot papers received at the Parliamentary constituency. In this election petition also the prayers were that the election of Surendranath Dwivedy should be declared void and that Surendra Mohanty who was impleaded as respondent No. 2 should be declared as duly elected.

Surendranath Dwivedy, respondent No. 1 in this case, filed his recrimination under section 97 of the Act on 30th May, 1962, and he filed his written statement on 9th June, 1962. The recrimination filed in this case is more or less on the same lines as the recrimination filed on Case No. 1. In the written statement all the allegations of corrupt practice alleged against Surendranath Dwivedy were denied and the irregularities alleged against the Assistant Returning Officer were also denied. Respondent No. 1 also averred that the petitioner of this case, Banbehari Mohanty, was not an elector and that his election petition was liable to be dismissed.

After the petitioner Banbehari Mohanty had filed a rejoinder to the recrimination, the following issues were settled after hearing both the parties, on 4th August, 1962.

ISSUES

1. Whether the petition fails to comply with the provisions of sections 81, 82, 83 and 117 of the Representation of the People Act of 1951. If so, how does that affect the case?
2. Whether the petitioner is not an elector? If so what is its effect on the case?
3. Whether any ballot papers were found missing from the ballot boxes? If so, how many? How does that affect the case?
4. Whether any ballot papers was wrongly cancelled?
5. Whether votes cast in favour of respondent No. 2 were wrongly rejected or refused?

6. Whether invalid votes cast in favour of respondent No. 1 were wrongly favour into account?
7. Whether counting of votes took place at places other than these previously notified? If so, how does that affect the case?
8. Whether sub-rules (2) and (4) of Rule 56 were not complied with? If so, what is its effect on the case?
9. Whether announcement made under rule 63(1) of the Conduct of Election Rules 1961 was in favour of respondent No. 2?
10. Whether force was used by respondent No. 1 or his companions and whether Mr. P. R. Chandra, Assistant Returning Officer was coerced to prepare false record declaring the respondent No. 1 elected?
11. Whether applications for recounting had been made by respondent No. 2? Did they remain undisposed of?
12. Whether votes cast in favour of respondent No. 2 have been counted as votes cast in favour of respondent No. 1?
13. Whether all postal ballot papers were not counted?
14. Whether Mr. P. R. Chandra was not validly appointed Assistant Returning Officer? If so, what is its effect?
15. Whether voters of the areas mentioned in paras 36 to 38 of the petition were deprived of their right of vote because of the non-availability of the original or additional list of voters?
16. Whether votes were recorded in Ranigaga booth in Mahanga Assembly Constituency even after the expiry of hours of polling? If so, how many such votes were recorded?
17. Whether the polling agent of respondent No. 1 in the Balishahi booth of the Salepur Assembly Constituency was performing the functions of the Polling Officer or was canvassing for respondent No. 1 or was exhibiting his symbol? If so, how does that effect the case?
18. Whether the Tribunal is incompetent to recount the votes?
19. Whether bullock carts were hired or procured for carrying electors as alleged in paras 44 and 55 of the petition? If so, is respondent No. 1 affected by the act of the persons who hired or procured the said conveyances? Does that constitute corrupt practice under section 123(5) of the Act?
20. Whether respondent No. 1 or his agents or any other person with the consent of respondent No. 1 published the pamphlet entitled "Nakill Congresslaku Thikana Jabab" and "Kahaku Vote Deba"?
21. Whether the publications mentioned in the last preceding Issue amount to corrupt practice as defined in Section 123(4) of the R.P. Act?
22. Whether respondent No. 1 or his agent or others with his consent committed acts of bribery mentioned in paras 48, 52, 53, 54, 56 and 58 of the petition within the meaning of section 123(1) of the R.P. Act?
23. Whether respondent No. 1 performed the acts mentioned in para 49 of the petition and thereby committed corrupt practice as defined in section 123(3) of the Act?
24. Whether respondent, his agent or other persons with his consent performed acts mentioned in para 50 of the petition and thereby committed corrupt practice within the meaning of sections 123(3) and 123(3A) of the Act?
25. Whether Jadunath Kar canvassed for respondent No. 1 and induced the voters to vote for respondent No. 1 at the instance of respondent No. 1, his agent or other persons acting with his consent? Did he accompany respondent No. 1 to villages Harisahi, Dhaniganda?
26. Whether Jadunath Kar hold any office under the Government? If so what?
27. Whether the taking of assistance from Jadunath Kar amounted to corrupt practice as defined in section 123(7) of the Act?

28. Whether recrimination was filed beyond time?
29. Whether respondent No. 2 or his agents or any other person with his consent committed various acts of bribery alleged in paras 8(c) to 8(v) of the Recrimination?
30. Whether respondent No. 2 or his agent or any other person with his consent committed acts of undue influence mentioned in paras 9(a) to 9(c)?
31. Whether respondent No. 2, his agents or other persons with his consent hired or procured the vehicles mentioned in paras 11(a) to 11(e) of the Recrimination?
32. Whether respondent No. 2 engaged workers who were paid something as remuneration beyond their actual expenses? Did that act amount to corrupt practice?
33. Whether items of expenditure which should have been included in the Return of Election Expenses of respondent No. 2 have been omitted therefrom? If so, how does that affect the case?
34. Whether the total amount incurred or authorised by respondent No. 2 exceeds the prescribed maximum of Rs. 25,000/-?
35. Whether respondent No. 2 or his agents or other persons with his consent took the help of Block Development Officers as mentioned in para 14 of the Recrimination? If so, how does that affect the case?
36. Whether Government machinery was utilised in favour of respondent No. 2 to help him in his election campaign?
37. Whether respondent No. 2 had issued instructions to his agents and workers to act in accordance with law and whether corrupt practices were committed, if any, contrary to his order and without his consent and whether he had taken all reasonable means of preventing the commission of the said corrupt practices?
38. Whether the result of election was materially affected by the corrupt practices committed by either respondent No. 1 or respondent No. 2 or their agents or persons acting with their consent?
39. Whether the elections of respondent No. 1 is liable to be set aside?
40. Whether respondent No. 2 is entitled to be declared elected?

The petitioner in this case also applied for permission to inspect the used ballot papers. The petition was opposed by the respondent Surendranath Dwivedy. The Tribunal in its order dated 18th August 1962 (the date on which the application of Surendra Mohanty for inspection was rejected) allowed the prayer of the petitioner Banbehari Mohanty for inspection of the used ballot papers, pointing out that the petitioner had to specify which valid ballot papers had been wrongly rejected, which invalid ballot papers had been wrongly accepted and which votes in favour of Surendra Mohanty had been wrongly counted in favour of Surendranath Dwivedy and that he could not furnish the particulars unless inspection allowed. The Tribunal in this connection relied on the Supreme Court decision *Bhim Sen Versus Gopali and others*, XXII E.L.R. 288. The respondent Surendranath Dwivedy filed an appeal before the Orissa High Court against the order of the Tribunal allowing inspection, but by an order dated 5th September 1962 the High Court held that the Tribunal had been right to follow the observations of the Supreme Court in *Bhim Sen Versus Gopali and others*, and had permitted inspection of the ballot papers after providing necessary safeguards, and that similar facilities were also allowed to the respondent, and that in the circumstances their Lordships saw no reason for interference. It should be mentioned that when the petitioner's application for inspection of ballot papers was allowed on 18th August 1962, Respondent Surendranath Dwivedy filed an application on 29th August 1962 for being permitted to make similar inspection, and this was allowed by an order of the Tribunal on 21st August 1962, and this is what was referred to by their Lordships of the Orissa High Court. The Tribunal by further orders laid down the procedure for inspection, which was to be conducted by the District Magistrate of Cuttack or by a responsible Magistrate to be deputed by him. Inspection of the ballot papers by the two parties actually commenced on 15th September 1962. For 8 days the District Magistrate of Cuttack, C. Venkataramani (D.W. 4), himself conducted the inspection. Thereafter he handed over the work of conducting the inspection to his Additional District

Magistrates S. N. Rath, Additional District Magistrate (D.W. 18) conducted the inspection for 15 days, and U.P. Guru, another Additional District Magistrate (D.W. 19) conducted the inspection for another 15 days. Altogether the inspection lasted for 38 working days and was completed on 10th November, 1962. On 26th November 1962 the petitioner Banbehari Mohanty filed an application for amendment of his election petition by adding particulars of the ballot papers alleged to have been improperly rejected, or received or counted. Respondent Surendranath Dwivedy filed an objection to the petitioner's application for amendment. He also filed a similar application for amendment of his recrimination petitions by adding particulars of ballot papers which according to him had been improperly rejected or received or counted. The Tribunal after hearing both the parties allowed both the applications for amendment, so that the election petition of Banbehari Mohanty and the petitions of recrimination of Surendranath Dwivedy in both the cases were amended by adding annexures containing lists of ballot papers which according to this parties were wrongly rejected or wrongly received or wrongly counted.

Thereafter on 19th December 1962 the following 3 additional issues were framed in both the cases:

Additional issues in Election Petition No. 1/1962

1. Whether valid votes cast in favour of respondent were wrongly rejected?
2. Whether invalid votes cast in favour of petitioner were wrongly taken into account? and
3. Whether votes cast in favour of respondent were counted as votes for petitioner.

Additional issues in Election Petition No. 54/1962

1. Whether valid votes cast in favour of respondent No. 1 were wrongly rejected?
2. Whether invalid votes cast in favour of respondent No. 2 were wrongly taken into account? and
3. Whether votes cast in favour of respondent No. 1 were counted as votes for respondent No. 2?

The petitioner Banbehari Mohanty filed an application at this stage for dispensing with oral evidence and for holding a recount of all the ballot papers, contending that the inspection, had revealed errors both in the matter of acceptance and rejection of ballot papers, and sufficient case had therefore been made out for recount, which would considerably shorten the proceedings. This application was, however, rejected by the Tribunal on 22nd December 1962, it being held that oral evidence must be taken first by the Tribunal before the question of recount of all the ballot papers could be considered.

The cases therefore proceeded to trial, which was somewhat delayed owing to the changes of the Incumbent of the Election Tribunal. By his order dated 5th June 1963, Mr. D. N. Roy settled the order in which witnesses would be examined viz. that witnesses for the petitioner in Case No. 1/62 and thereafter witnesses for the petitioner in Case No. 54/62 would be examined, on the main case made out in the Election petitions; that then the witnesses for the respondent Surendranath Dwivedy on the main case would be examined; that thereafter, the evidence bearing on the recrimination in the two cases would be recorded, the respondent leading his evidence first and then the petitioners giving rebutting evidence. This procedure has been followed in recording the evidence except that I decided to take up the evidence on the main case of the petitioners together and not separately.

On the completion of the examination of the witnesses for the respondent, an application was filed on 16th September 1964 by the respondent for framing an additional issue as to tampering with the ballot papers and the evidentiary value thereof; and after hearing both sides the following additional issue was framed on that date:—

Additional issue framed on 16-9-64

1. Were the used ballot papers properly kept in safe custody after counting or were they tampered with? Have they any evidentiary value?

Therefore, the petitioners led evidence in rebuttal and evidence was closed on 25th September 1964.

DECISION OF ISSUES

Case No. 1 of 1962

Issues Nos. 6 and 7 of this case were decided as preliminary issues on 24th May 1963, it being held that the election petition makes out a *prima facie* case, and that the re-primination filed under section 97 is not barred by limitation.

Issue No. 1—This issue relates to the question whether at first P. R. Chandra, Assistant Returning Officer, made an announcement that Surendra Mohanty, the petitioner of this case, had won by a majority of 212 votes. It has been mentioned before that on 28th February, 1962, Surendra Mohanty sent a telegram to the Election Commission alleging that the Assistant Returning Officer had first announced that he had obtained a lead of 212 votes, and that the Election Commission called for a report from the District Magistrate on that and on other allegations. In his confidential letter (Ex. CC) dated 8th March, 1962 the District Magistrate, C. Venkataramani, referred to this allegation in the last but one paragraph of his report. There he stated as follows:

“About a few hours before the Election results were announced the Assistant Returning Officer unofficially informed a leading number of the Congress Party when specifically asked over telephone that it appears that the Congress candidate was leading by 212 votes. It was discovered immediately thereafter that there was an arithmetical mistake and that this figure was wrong. The Assistant Returning Officer also took the trouble of informing the correct position to the person who had telephoned. It may be noted that the communication of this information was completely unofficial and was done during the progress of counting and because the Assistant Returning Officer was asked to inform the progress over telephone.”

C. Venkataramani, the District Magistrate has been examined as D.W. 4 and has proved the letter. He has stated that he obtained the information as given in his letter by obtaining a report from the Assistant Returning Officer, Sri P. R. Chandra. The report or letter of course is not direct evidence, but it has value because it gives a practically contemporary explanation of what had happened. Direct evidence has also been obtained on this point. P. R. Chandra has been examined in this case as a court witness. His evidence shows that it was either the then Chief Minister or the Deputy Chief Minister of Orissa who asked for the information over the phone. P. R. Chandra's evidence is that when he received the inquiry over the phone, he went into the Counting Hall in the S.D.O.'s office premises and after learning from the Counting staff that the Congress candidate was leading by 212 votes or something like that, he gave that information over the phone, but subsequently after checking the totalling when it was reported that the totalling was not correct and the P.S.P. candidate was leading by some votes, he phoned up to the person to whom he had given the earlier incorrect information and gave him the correct position. At that stage according to his evidence, P. R. Chandra did not make an announcement of the result as contemplated by rule 63 sub-rule (1) of the Conduct of Election Rules, 1961. On behalf of the petitioner the main witnesses on the point are P.W. 2, Narsing Sahu, P.W. 3 Radhashyam Agarwala and P.W. 6 Purusottam Naik P.W. 2 Narsingh Sahu was a Polling Agent and Counting Agent for Surendra Mohanty at the Parliamentary election. He said that a few minutes before 4 p.m. on 27th February 1962 the counting in respect of Mahanga was over; that thereafter all the Counting Agents assembled at the table of the Assistant Returning Officer, that at that table there were the A.D.M. Chandra Babu and the S.D.O. Murty Babu; that Chandra Babu after calculating the result on a large sheet of paper said that the Congress candidate was leading by 192 votes and that there were some postal ballots which should be looked into, that Murty Babu then brought out the postal ballots which were counted and found to be 25 in number, and 20 were found to be in favour of the Congress candidate and 5 for the P.S.P. candidate; that the witness then objected saying that he had heard that the postal ballots were 30 in number and not 25; then Murty Babu said that it did not matter as the Congress candidate was already leading by 212 votes, and then in jubilation the Congress workers left the hall and the witness also started for Purusottam Naik's house. The witness added that just after that, Surendranath Dwivedy, Hrudananda Mohanty and 4 or 5 other P.S.P. men went into the Counting Hall, and he turned back and followed them into the Counting Hall; that he heard Bhagabat Prasad Mohanty and Surendranath Dwivedy asking Chandra Babu to do the totalling correctly, that Chandra Babu at that stage went to attend a telephone call and returned after 2 or 3 minutes, and then at the instance of S. N. Dwivedy and Bhagawat Prasad Mohanty he re-totalled the figures and then said that the P.S.P. candidate was leading by 66 votes. The evidence of P.W. 3 Radhashyam

Agarwalla is not of much importance. He says that he acted as Counting Agent for Surendra Mohanty at the Municipal Hall, and on 27th February 1962 after 4 P.M. he was loitering near the S.D.O.'s office, when he heard some people saying that Congress candidate had won by 212 votes, and that after an hour he heard that Dwivedy Babu had won by 66 votes. This witness filed one of the petitions for recount. The witness does not speak of any announcement by the A.R.O. in favour of S. Mohanty.

P.W. 6, Purusottam Naik is a more important witness. He was a member of the Legislative Assembly of Orissa for 2½ years, and at the time when he deposed he was the General Secretary of the District Congress Committee, Cuttack. He is also the Chairman, Panchayat Samiti, Kendrapara II. His evidence on the point at issue is that he was acting as Counting Agent in the Counting Hall in the S.D.O.'s Office building, that on 27th February 1962, the counting of Mahanga Assembly Constituency ballot papers was over at 4 P.M.; that after totalling up the votes, the Assistant Returning Officer said that leaving the postal ballot papers the Congress candidate was leading by 197 votes; that the postal ballot papers were counted at 4.15 P.M. and it was found that the Congress candidate had obtained 20 and the P.S.P. candidate 5 of these ballots, and that it was stated that the Congress candidate has received a majority of 212 votes, than a peon came and said that Chandra Babu was wanted over the phone, and at that time Surendranath Dwivedy and Bhagabat Prasad Mohanty came, and Bhagabat Prasad Mohanty filed written petition stating that the totalling was wrong, and that Chandra Babu came back after about 5 minutes to the Counting Hall, and then a quick re-totalling was done and it was found that the P.S.P. candidate was leading by 66 votes. It should be noted that the witness did not speak of the A.R.O. having formally announced the result that the Congress candidate had won by 212 votes. According to his evidence, at the first wrong totalling it appeared that the Congress candidate was leading by 212 votes, but soon thereafter the totalling was checked and it was found that the P.S.P. candidate was leading by 66 votes.

The witnesses for the respondent on the point are D.W. 1, Pradipta Kishore Das, D.W. 2 Surendranath Dwivedy, D.W.3, Bhagabat Prasad Mohanty and D.W.7 Krushna Chandra Mallik. D.W.1 stated that there was no announcement at any time that Surendra Mohanty had won by 212 votes. According to his evidence the counting of the ballot papers of Mahanga constituency was finished at about 4 P.M., and before postal ballots were counted both Chandra Babu and Murty Babu left the hall and were in the S.D.O.'s chamber for about an hour; that petitions were filed on behalf of the P.S.P. candidate protesting against their absence from the Counting Hall; that after about an hour the Assistant Returning Officers returned to the Counting Hall and Sri Chandra counted the postal ballots and then he announced the total votes polled by each candidate the figures showing that the P.S.P. candidates was leading by 66 votes, and thereafter asked for petitions for recount, if any, and after some time the result was formally declared.

D.W.2, Surendranath Dwivedy went to the Counting Hall at about 4.30 P.M.; according to his evidence, shortly after his arrival the Assistant Returning Officers left the Counting Hall and were absent for about an hour; the witness received information from his Counting Agents that P. R. Chandra was talking over the phone with the Chief Minister, and he caused objection petitions to be filed and he also sent a telegram to the Election Commission; that after about an hour Sri Chandra and Sri Murty came back to the hall and Sri Chandra started counting the postal ballots; then another telephone call was received and the witness protested against Sri Chandra interrupting his working of counting the postal ballots and going to answer the phone call, and then Sri Murty was sent to answer the phone call and Sri Chandra completed the counting of the postal ballots and then he made the totalling of all the votes and announced the result, namely, that the witness Dwivedy was leading by 66 votes.

D.W.3, Bhagabat Prasad Mohanty also asserted that it never was announced at any time that Surendra Mohanty was leading by 212 votes. He said that he was maintaining a running total of ballot papers counted in favour of each candidate, and that after counting was completed, Dwivedy was leading by 81 votes with the postal ballots still to be counted. D.W. stated that before counting of postal ballots, the Assistant Returning Officers went to the S.D.O.'s chamber; that he and Krushna Chandra Mallik followed them, and from outside the chamber he overheard part of the telephone conversation and that he inferred from what he heard that P. R. Chandra was speaking with the Chief Minister, and he informed Dwivedy about it, and he and Krushna Chandra Mallik filed a joint petition under the instruction of Dwivedy, protesting against the Assistant Returning Officer

talking at that stage with the Chief Minister and delaying the declaration of the result, that the Assistant Returning Officer returned to the Hall at about 5.30 p.m. and then P. R. Chandra counted the postal ballots which took about half an hour, and a little after 6 p.m. he first announced the result, and after a short while made the formal declaration that Dwivedy had won by 66 votes.

The evidence of D.W.7 Krishna Chandra Mallik, who like D.W.3 is a practising lawyer of Kendra para, is similar to that of D.W.3. He stated that when counting of ballot papers from the ballot boxes was complete Dwivedy was leading by 81 votes. According to him, the position never was, whether due to wrong totalling or otherwise, that Surendra Mohanty was supposed to be leading by 212 votes. He was one of the persons who accompanied Bhagabat Prasad Mohanty when the Assistant Returning Officers went to the S.D.O's chamber, and he claimed to have over-heard part of the telephone conversation. Ex. BB is the petition which was filed before the Assistant Returning Officer under the signature of Krushna Chandra Mallik, Bhagabat Prasad Mohanty and two others. The petition is as follows:

"While we are anxiously awaiting at the Counting table at 4.45 p.m. after completion of the counting for the announcement of the result, both of you suddenly left the table and went outside without making the announcement and without assigning any reason. When we followed you we overheard that you were in telephonic conversation with the Chief Minister who in this case has no jurisdiction excepting that he is the leader of the Congress Party. This is a semi-judicial proceeding and you are acting on behalf of the Election Commission over which the Chief Minister has no jurisdiction. This is highly objectionable and we take strong exception to such exceptional procedure".

Ex. BB/1 is the receipt which was signed by P. R. Chandra on receiving the application Ex. BB and the time noted thereon is 5.25 p.m. Ex. FF/1 is the objection petition over the same matter under the signature of Surendra nath Dwivedy. Thereon also the receipt of P. R. Chandra is endorsed, the time being given as 5.25 p.m. These contemporaneous documents clearly show that there could not have been any announcement of the result at 4.15 p.m. or 4.30 p.m. as suggested by the petitioner's witnesses.

As to the question whether the postal ballots were counted before or after P. R. Chandra had gone to the S.D.O's chamber to answer the telephone call from the Chief Minister, there is discrepancy between the evidence of the witnesses of the two sides, for according to the petitioner's witnesses the postal ballots were also examined by P. R. Chandra and the position was believed to be that the congress candidate was leading by 212 votes (197+15) and this was at about 4.30 p.m. before the total was checked at the instance of Surendranath Dwivedy and Bhagabat Prasad Mohanty and found to be wrong, which was done after 5 p.m. The evidence of respondent's witnesses is that postal ballots were counted between 5.30 p.m. and 6 p.m., after the Assistant Returning Officers had come back from the Chamber after telephonic conversation with the Chief Minister. Ex. AA is a post copy of a telegram sent by Surendra Dwivedy to the Election Commission on 27th February, 1962. It was stated therein that during the counting of votes, after all votes excepting the postal ballots had been counted, it was found that Surendranath Dwivedy was leading by 81 votes and at that stage the Assistant Returning Officers had absented themselves for an hour without counting the postal ballots. P. R. Chandra himself in his deposition stated that he did not clearly remember whether he counted the postal ballots before or after he had gone to the S.D.O's chamber to speak with the Chief Minister or the Deputy Chief Minister. But he said that he had communicated the report as to the Congress candidate leading by 212 votes, while the counting was still going on. It follow therefore that the postal ballots could not have been counted at that stage, for postal ballots were counted after the counting of ballot papers from the ballot boxes was completed. Further, in view of the contents of Ex. AA referred to above, it would be reasonable to hold that the postal ballots were counted afterwards i.e., not before 4.30 p.m. but after 5.25 p.m. which is the time endorsed on Ex. BB/1 and Ex. FF/1. It has been urged that only by adding 15 votes by which Surendra Mohanty led in respect of postal ballots we would get the number 212. It would, however, appear that it was without taking into account the result of the postal ballots that the wrong totalling gave Surendra Mohanty a lead of 212 votes. It is true that P.W. 6 spoke of Surendra Mohanty leading 197 before the postal ballots were counted but it would appear that he got the number 197 by subtracting 15 from 212. P.W.2 spoke of 192 and not 197, and this lends support to the inference that the wrong totalling showed a lead not of 197 or 192, but of 212, which was actually reported to people

outside. The evidence of P.W.1 Gour Chandra Rout, the editor of the paper 'Matrubhumi' is that a report was first circulated that the Congress candidate had won by 212 votes and then it was found to be wrong and it was ascertained that the P.S.P. candidate had won by 66 votes and further, that the lead of 212 was reported when the counting was still going on.

The witnesses of the respondent cannot, however, be believed when they say that at no stage as the result of wrong totalling or otherwise, the position was that the Congress candidate was leading by 212 votes. The re-totalling is spoken of not only by the witnesses of the petitioner but by the Assistant Returning Officer, P. R. Chandra. P. R. Chandra also stated that a computer machine was used to check the total. It might be that the mistake in totalling was found out as a result of check by the computer machine; or it might be that the re-totalling was done at the instance of the P.S.P. men. Be that as it may, it is clear that at one stage, due to wrong totalling, Surendra Mohanty was supposed to be leading by 212 votes after the ballot papers from the ballot boxes had been counted, but not the postal ballots and only as a result of retotalling it was found that Surendranath Dwivedy was leading by 81 votes, which lead was reduced to 66 after the counting of postal ballots. But there was no formal announcement at any stage under rule 63 sub-rule (1) in favour of the petitioner Surendra Mohanty.

Issue No. 2.—This issue relates to the question whether force was used by the respondent or his companions and whether P. R. Chandra, Assistant Returning Officer was coerced to prepare false record declaring the respondent elected. This issue, as framed, is somewhat misleading, because the petitioner's case is not that P. R. Chandra was coerced into preparing false record declaring the respondent elected, but his case is that he was coerced into declaring that the respondent was elected, without giving sufficient opportunity to the petitioner to ask for recount, and that subsequently P. R. Chandra regularised the position by preparing false record by writing up some orders. In support of the case that P. R. Chandra was acting under duress and was therefore confused, it has been urged on behalf of the petitioner that he used a wrong form in declaring the result; that the result was to be declared in form No. 21 of the forms prescribed by the Conduct of Election Rules, but P. R. Chandra declared the result in form No. 20. This contention, however, cannot be accepted. Rule 63 sub-rule (1) requires that after completion of the counting the Returning Officer shall record in the result sheet in form 20 the total number of votes polled by each candidate and announce the same. Sub-rule (2) provides that after such announcement, any candidate or in his absence his Election Agent may apply for recount. Sub-rules (3), (4) and (5) deal with the procedure for dealing with any application for recount. Sub-rule (6) provides that after the total number of votes polled by each candidate has been announced, the Returning Officer shall complete and sign the result sheet in form No. 20 after giving a reasonable opportunity for filing applications for recount, and no application for recount shall be entertained thereafter. Rule 64 provides that the Returning Officer shall then declare to be elected the candidate to whom the largest number of valid votes had been given, complete and certify the return of election in form 21 and send copies thereof to the Election Commission and to the Chief Electoral Officer. It is thus clear that the declaration of the result is not required to be made in form No. 21, but form 20. Form 21 is the form in which the return of election is certified and sent to the Election Commission and to the Chief Electoral Officer. For the declaration itself no form is prescribed, but it is to be made after completed result sheet is signed under sub-rule (6) of rule 63. Ex. XVII is the result sheet in form 20 prepared by P. R. Chandra as the Returning Officer. In this result sheet he first noted down the total number of votes polled by each of the candidates in each of the 7 Assembly Constituencies and also the postal ballots. He then made totals of the columns appertaining to the two candidates. Below the result of totalling be noted:—

"Sri Surendranath Dwivedy having polled 66 votes more than Surendra Mohanty is hereby declared elected".

He signed this, noting the time as 6.20 P.M. In his deposition in court, P. R. Chandra stated that he obtained the totals of valid votes received by each candidate in each Assembly Constituency from the detailed statements in form 20 relating to each Assembly Constituency and then he totalled the figures and announced the total number of votes received by each candidate. According to his evidence the announcement was made by him at 6.15 P.M., then he invited applications for recount, and he put his signature below this form at 6.20 P.M. and at the same time formally declared the result. He stated that he filled up the return of election in form 21 immediately thereafter. Ex. XVIII is the Return of Election in form 21 under the signature of P. R. Chandra dated 27th February 1962; the time is not noted thereon. It is clear that no confusion was made by P. R. Chandra in declaring the result, he used the correct procedure as prescribed by rules 63 and 64 of the Conduct of Election Rules.

Some witnesses for the petitioner, namely P.W.2, P.W.3 and P.W.6 gave some evidence to prove that P. R. Chandra was coerced into declaring the result without giving reasonable opportunity to the Congress candidate for filing a recount petition. Surendra Mohanty deposed as P.W.7, but he is not a witness on the point, because he never went to the counting hall on that day. According to his evidence he was somewhat indisposed on that day he was at Cuttack, where at about 1.40 p.m. he received a phone call from Purusottam Naik who was at Kendrapara asking him to come to Kendrapara; that he started by a jeep after taking his lunch after 2.30 p.m. but his departure was delayed till about 3.30 p.m. owing to mechanical trouble in the car. He arrived at Kendrapara at about 4.30 p.m. and went to the house of Purusottam Naik and was feeling unwell after the strain of the jeep ride and so he could not go at once to the Counting Hall. At Purusottam Naik's house he met Avedananda Satpathy (P.W. 4) and subsequently met Banbehari Mohanty. When he learnt that he was trailing by 66 votes he dictated petitions for recount and sent the first of them through Banbehari Mohanty, and then he dictated two more petitions for recount and accompanied by Avedananda Satpathy he proceeded towards the Counting Hall in a jeep, but owing to a crowd he could not go up to the Counting Hall and sent the two petitions through Avedananda Satpathy to the Counting Hall and he himself stayed in the jeep. He learnt subsequently that his petitions for recount had not been considered.

Thus, Surendra Mohanty did not himself know what happened in the Counting Hall and whether P. R. Chandra was coerced in any way. The evidence on that points is of P.Ws. 2, 3 and 6. None of these witnesses stated in court that the P.S.P. men banged at the door of the S.D.O.'s office chamber and almost bodily lifted P. R. Chandra into the counting hall. The evidence of P.W. 2 is that when it appeared that the Congress candidate was leading by 212 votes, the Congress workers left the Counting Hall in jubilation and he also left and was proceeding towards the house of Purusottam Naik, and on the way he found Bhagabat Prasad Mohanty going into the Counting Hall and then he saw Surendranath Dwivedy, Hrudananda Mohanty and 4 or 5 P.W. men going into the counting hall and there were 50/60 men of the town following them. Thereupon the witness also followed them into the Counting Hall. On his arrival he heard Bhagabat Prasad Mohanty and Surendranath Dwivedy asking Chandra Babu to check the total properly; at that stage on being informed about a telephone call, Chandra Babu went to his chamber but he returned after two or three minutes and on his return Bhagabat Prasad Mohanty and Surendranath Dwivedy caught hold of the large sheet of paper on the table (on which votes obtained by each candidate was noted) and asked that Chandra Babu should do the retotalling, and after retotalling Chandra Babu said that the P.S.P. candidate had won by 66 votes. The witness first said that 2 or 3 minutes later, he said that 10/15 minutes later, purusottam Naik filed a petition for recounting; but as soon as the petition was put on the table Bhagabat Prasad Mohanty put it aside and insisted that the declaration should be made that the P.S.P. candidate had won; and then two other applications sent by Surendra Mohanty were made over, but again Surendra Dwivedy insisted that he had won by 66 votes and the result be declared; and Chandra Babu then signed the sheet on which the totals had been noted and declared that the P.S.P. candidate had won by 66 votes without having able to pass order on the petitions for recount.

P.W.3 was loitering outside the counting hall and after 5 p.m. he saw a large crowd gathering and shouting slogans in favour of surendranath Dwivedy. The witness went into the Counting Hall and found about 100 persons inside shouting "Dwivedy ki Jai" and hearing that Dwivedy Babu had won by 66 votes he wrote out a petition on behalf of Surendra Mohanty for recounting and handed it to Mr. Chandra. But Mr. Chandra refused to consider the petition. He said that at the time P. R. Chandra was sitting at the table and was being insistently asked by Surendranath Dwivedy and 20 other people who were present around him that Dwivedy Babu should be declared elected. The witness said that another petition for recount was presented to Shri Chandra by another Counting Agent, and 5 minutes later Purusottam Naik brought a petition from Surendra Mohanty, and 5 or 10 minutes later two more petitions signed by Surendra Mohanty were filed. But the P.S.P. men put their hands on the petitions which were placed on the table, and demanded that the petitions must not be considered and Dwivedy Babu must be declared elected, and then Chandra Babu signed the result sheet and declared that Dwivedy had been elected. P.W.6 stated that after it was first stated that the Congress candidate had received a majority of 212 votes, Surendranath Dwivedy and Bhagawat Prasad Mohanty came and Bhagabat Prasad Mohanty filed a written petition that the calculation was wrong, that Chandra Babu went to attend a telephone call without listening to that; that he came back 5 minutes later and at the table were Sri Chandra and Sri Murty the S.D.O. of Kendrapara,

while Bhagabat Prasad Mohanty and Surendranath Dwivedy and certain other men were surrounding them. A quick calculation was then made and Bhagabat Prasad Mohanty said that the P.S.P. candidate was leading by 66 votes and this was repeated by Sri Murty. The P.S.P. men then left the hall in a jubilant manner but the crowd was still there outside the gate. The witness asked Brahamananda Rout and Jairam Naik to go and phone to Surendra Mohanty about what had happened. The witness went to the verandah to await the coming of Surendra Mohanty. During that time Radhashyam Agarwal and Govind Sarangi filed written petitions for recounting. The Banbehari Mohanty came and gave the witness a petition saying that it had been signed by Surendra Mohanty and the witness presented that petition to Sri Chandra. Bhagabat Prasad Mohanty however, pushed aside that petition and insisted that the result should be declared. Two other petitions were then brought by Banbehari Mohanty and they were filed but Bhagabat Prasad Mohanty placed his hands on the petitions and asked Sri Chandra to declare the result. When Chandra was being shouted at and threatened, he declared the result and did not take any action on the petition for recount.

On the other hand, the witnesses for the respondent denied that any threat or violence was used on the Assistant Returning Officer, though their evidence shows that they expressed their annoyance at the Assistant Returning Officers keeping themselves in the S.D.O.'s chamber for a long time even after it was known that the P.S.P. candidate was leading by 81 votes i.e., before the counting of the postal ballots; and they filed two petitions Ex. BB and Ex. FF/1 in this connection. D.W.1, Pradipta Kishore stated that after Sri Chandra had announced the result and called for petitions for recount if any, two petitions for recount were filed by two Counting Agents of Surendra Mohanty, namely, Radhashyam Agarwala and Govind Sarangi, and those petitions were rejected by the Assistant Returning Officer, and that as no petition signed by Sri Surendra Mohanty was filed the result was formally declared. The witness denied the suggestion that Surendranath Dwivedy had come into the Counting Hall with 60 or 70 followers. D.W.2 Surendranath Dwivedy spoke on this point to the same effect as D.W.1. He said that Chandra Babu rejected the application for recount filed by Radhashyam Agarwala as it was not filed by the candidate for his Election Agent, and he stated further that no petition signed or purporting to have been signed by Surendra Mohanty was filed before declaration of the result, and that it was 15 or 20 minutes after the result was declared that the first petition purporting to be signed by Surendra Mohanty was filed before P. R. Chandra and that thereafter two more petitions purporting to be signed by Surendra Mohanty were filed before Sri Chandra, and Sri Chandra noted the time of receipt of those petitions, and naturally he did not consider them, because they were filed after the result had been declared i.e., after Sri Chandra had signed the result sheet in form 20. The evidence of D.W.3, Bhagabat Prasad Mohanty is similar. He denied the suggestion that he had put his hands on petitions for recount signed by Surendra Mohanty or his agents or that he had insisted that they should not be considered and that the result should be declared. That is also the evidence of D.W.7, Krushna Chandra Malik.

Sri P. R. Chandra who deposed as a court witness denied that he had been almost bodily lifted or coerced into going into the Counting Hall and declaring the result. He admitted that when he and Murty, the then S.D.O. of Kendrapara, were in the S.D.O.'s chamber dealing with the phone call from the Chief Minister or the Deputy Chief Minister, some people banged at the door of the chamber, and that when he opened the door Dwivedy or some body else asked him to proceed to declare the result, and that then he went into the Counting Hall and proceeded with the counting of the postal ballots. He denied the suggestion that at that stage he was threatened or coerced or prevented from dealing with applications for recount. He admitted that when he was counting the postal ballots he was informed that a phone call had come for him and at that time Dwivedy objected that he could not leave the work to attend the phone call and therefore he did not go and sent Murty instead. This does not amount to coercion. He said that after writing up form No. 20 but before signing the same he announced the result at 6.15 P.M. He received the application for recount filed by Radhashyam Agarwala and rejected it, as it was not signed by the candidate or his Election Agent but only by a Counting Agent. It may be mentioned in this connection that under rule 63 sub-rule (2), after the result had been announced, a candidate or in his absence his election agent may apply in writing to the Returning Officer for a recount. An election agent is defined in section 40 of the Act and his functions are described in section 45 of the Act. The functions of Polling Agents and Counting Agents are mentioned in section 49. An Election Agent has much wider power than a polling agent or a counting agent, and Surendra Mohanty admitted that he had not appointed any election agent in

connection with the Parliamentary election, but only polling agents and counting agents. In the circumstances, the Assistant Returning Officer was quite right in rejecting the petition for recount filed by Radhashyam Agarwalla who was not the election agent of the congress candidate. As regards the 3 petitions for recount purporting to be signed by Surendra Mohanty Sri P. R. Chandra stated that they were received respectively at 6.40 p.m., 6.45 p.m. and 6.50 p.m. i.e. long after he had signed the result sheet and declared the result, which was done at 6.20 p.m. Naturally, therefore he could not consider those applications.

The evidence of P. R. Chandra finds supports from the endorsements made in his hand on the petitions for recount purporting to have been signed by Surendra Mohanty, namely, Ex. IV, V and VI and also from the two orders recorded by P. R. Chandra at the time, namely, Ex. GG and GG/1. Ex. GG dated 27th February 1962 reads as follows:

"After completion of counting the total number of votes polled by each candidate was announced. Before signing the result sheet the candidates and those present were given reasonable opportunity to exercise their right to ask for a recounting. One Radhashyam Agarwal, Counting Agent of Surendra Mohanty gave in writing a petition for recounting. Article 17 of the Hand-book for the Returning Officers at page 60 reads, 'A candidate or in his absence his Election Agent may apply in writing for recounting of all or any of the ballot papers already counted.' This clearly indicates that a candidate or in his absence his election agent is to apply in writing for recounting. In the present case a Counting Agent has applied. As such the petition for recounting cannot be entertained".

Ex. GG/1 reads as follows:

"The attached 4 petitions were received either from the Authorised Counting Agent of Surendra Mohanty or from Surendra Mohanty himself. Petition No. 1 was received at 6.10 p.m. I announced the result of polling at 6.15 p.m. and put my signature at 6.20 p.m. Before putting my signature I invited the parties whosoever liked to exercise their right to ask for recount. In response to that Radhashyam Agarwalla, Counting Agent for Surendra Mohanty filed a petition which has been dealt with in a separate order. The other 3 petitions were received at 6.40, 6.45 p.m. and 6.50 p.m....."

After noting as above the Assistant Returning Officer proceeded to refer to Article 17 of the Hand-book and also to the fact that no application for recount put after signature of the result sheet could be considered. He ended by observing that the petitions could not be entertained as they were filed either before announcement of the result or after the declaration of the result.

It has been suggested on behalf of the petitioner that these two ordersheets were subsequently written up by P. R. Chandra in order to cover up his illegal declaration of the result without considering the petitions for recount. But though further cross-examination of P. R. Chandra by the petitioner's counsel was permitted after the order sheets Ex. GG and GG/1 were put in evidence on behalf of the respondent, no suggestion was made to the witness that Ex. GG and GG/1 were written up later and not written at the time when they ought to have been written. It would appear from the evidence of P. R. Chandra himself and the evidence of D.W. 5 Santosh Mohanty, an officer of the Posts and Telegraphs Department, that a great many telephone calls from the Chief Minister and the Deputy Chief Minister were received by P. R. Chandra on 27th February, 1962. Naturally, therefore, the Assistant Returning Officer, P. R. Chandra was anxious to do his duty strictly in accordance with the rules. There is no reason at all to think that out of bias in favour of the P.S.P. party he would wrongfully omit to consider the recount petitions if they had been filed properly or in time, and as to the suggestion of coercion, I do not find that the evidence establishes that P. R. Chandra was acting under any such coercion, although Surendranath Dwivedy or some of his Counting Agents like Bhagabat Prasad Mohanty might have displayed some impatience at the delay made by the Assistant Returning Officer in announcing and declaring the result.

The issue is therefore decided in the negative.

Issue No. 3.—The issue reads as follows:

"Whether applications for recount had been made by the petitioner? Did they remain undisposed of."

This question has already been dealt with in dealing with the last issue. Altogether 5 applications for recount were filed, one by P.W. 3, Radhashyam Agarwalla, Ex. II: one by Govind Sarangi (not exhibited) and 3 petitions Ex. IV, V and VI, signed by Surendra Mohanty but sent through other persons like Avedananda Satpathy or Banbehari Mohanty. The Assistant Returning Officer passed an order in respect of Radhashyam Agarwalla's petition; he rejected it as it was not filed by the candidate or his election agent. He did not pass any order on the other 4 applications for recount as they were filed either before the announcement or after the declaration as stated in his order Ex. GG/1. After considering the evidences in the case I hold that the applications for recount were properly dealt with.

It is curious that Surendra Mohanty in his telegram Ex. VIII dated 28th February, 1962 to the Chief Election Commission referred to two petitions for recount filed by him. Apparently he was not by that time aware of the recount petitions filed by Radhashyam Agarwalla and Govind Sarangi; and there may be truth in the suggestion by the respondent's advocates that Ex. IV was not written to the dictation of Surendra Mohanty, but a form for appointment of counting agent bearing the signature of Surendra Mohanty was used by Purusottam Naik or some one else for making up a recount petition purporting to be signed by Surendra Mohanty.

But in any case, it is quite clear that no recount petition signed or purporting to be signed by Surendra Mohanty was filed in due time before the Assistant Returning Officer. This point is further dealt with in the course of discussion of the next issue.

Issue No. 4.—This issue reads as follows:

“Whether the provisions of rule 63 have been contravened?”

As stated previously, rule 63 requires that after totalling, the result should first be announced and then a reasonable opportunity should be given to the candidates or their election agents for filing applications for recount, and thereafter the result sheet should be signed, after which no more application for recount shall be received. The issue was framed as it was alleged by the petitioner that the Assistant Returning Officer had given no reasonable opportunity for submitting applications for recount. It has already been found, however, on reference to the evidence, that after he had announced the result at about 6-15 p.m., P. R. Chandra invited other applications for recount after Radhashyam Agarwalla had filed such an application and that no more applications for recount being filed before him, he declared the result at 6-20 p.m. The applications purporting to have been signed by Surendra Mohanty were filed long thereafter. The evidence of P.W. 6, Purusottam Naik has already been referred to, that when the totals were recalculated and it was announced that the P.S.P. candidate was leading by 66 votes, the witness asked Brahmananda Rout and Jairam Naik to go to the Congress office and to phone to Surendra Mohanty about what had happened. The witness was then waiting in the varendah of the Counting Hall for Surendra Mohanty to come. There is evidence of Surendra Mohanty that he arrived at the house of Purusottam Naik at about 4-30 p.m. and then he felt too weak to proceed to the Counting Hall. When he arrived he first obtained the information that he was leading by 212 votes, but about 10 minutes thereafter a phone call was received which was attended to by Avedananda Satpathy and simultaneously Banbehari Mohanty came and said that on recalculating the totals the figures had been upset and that he was trailing by 66 votes; that he was stunned and then said that he must file an application for recount, and that he dictated one application for recount and sent it through Banbehari Mohanty, and then he dictated two other petitions for recount and proceeded with Avedananda Satpathy in a jeep, and being unable to go himself in his sick condition through the crowd, he sent Avedananda with these two petitions to the Counting Hall. It is clear that all this took some time. The phone call informing him that he was behind by 66 votes could not have been received before 6 p.m., because the counting of postal ballots took place between 5-30 p.m. and 6-00 p.m., and before they had been counted, the exact difference of 66 votes could not have been known. Hence it is clear that before 6-20 p.m. the petitions for recount dictated and signed by Surendra Mohanty could not have reached the Assistant Returning Officer. They must have reached him between 6-40 p.m. and 6-50 p.m. as stated by P. R. Chandra himself and as noted by him on the petitions. It was naturally expected that the candidates should themselves be in the Counting Hall at the time when the result was due to be announced and declared. The Assistant Returning Officer could not know that Surendra Mohanty was unable to come due to illness. Normally, there was no reason for him to wait for more than 5 minutes to receive applications for recount. In the circumstances it must be said that there was no contravention of the provisions of rule 63.

Issue No. 5.—This relates to the question whether the Tribunal is competent to recount the votes. If sufficient case is made out for holding a recount there is no reason why the Tribunal should not be able to do the same. If, for instance, it had appeared that an application for recount made before a Returning Officer had been wrongfully rejected, the Tribunal would certainly direct that a recount be held. As it is, however, the question of recount hardly arises. On the application of the petitioner in the other case, the ballot papers have been permitted to be inspected and each side has proved before the Tribunal the ballot papers claimed to have been wrongly rejected or wrongly received or wrongly counted, and after deciding which ballot papers were wrongly received or wrongly rejected or wrongly counted, it can be ascertained by calculation how many valid votes were received by each party. The question of full recount does not, therefore, arise.

But on the petition of the petitioner of this case inspection of ballot papers was not allowed, it being held that his election petition did not disclose sufficient ground for obtaining an inspection of the ballot papers. On his own case the petitioner Surendra Mohanty could have obtained an order for recount of the ballot papers only if he had succeeded in proving that the Assistant Returning Officer P. R. Chandra had wrongly rejected the petitions for recount filed by him at the proper stage or had omitted to consider them illegally, or if the petitioner had succeeded in establishing that P. R. Chandra was by threat of violence coerced into declaring the result without observing the rules for the conduct of election. But these allegations not having been established, the petitioner cannot obtain a recount.

Issue Nos. 8 to 15.—These issues relate to corrupt practices alleged to have been committed by the petitioner. They arise out of the recrimination. They correspond to issue Nos. 29 to 36 of the connected case and they will be dealt with when dealing with the issues of that case. In case No. 1 the petitioner cannot in any case succeed in obtaining a declaration that he has been duly elected because, as observed above, having failed to prove his case that the result of the election was materially affected by any non-compliance with the provision of the Conduct of Election Rules, it cannot be found that the election of the respondent has been void.

Issue No. 16.—The petitioner has not succeeded in making out any case for declaring the election of the respondent as void.

Issue No. 17.—It follows that the petitioner on his own case is not entitled to be declared elected.

Additional Issues.—These issues properly arise in the connected case and not in this case. They will be dealt with in the proper place in the course of discussion of the issues of the connected case.

Issues in case No. 54 of 1962.

Issue Nos. 1 and 28.—These issues were decided as preliminary issues *vide* order of the Tribunal dated 24th May, 1963, along with Issue Nos. 6 and 7 of Case No. 1 of 1962. It was held that the election petition of Banbehari Mohanty was in order and in accordance with the provisions of the relevant Sections of the Act provided he is found to be an elector, and that the recrimination was filed in time and is not barred by limitation.

Issue No. 2.—This issue deals with the question whether the petitioner of this case, Banbehari Mohanty, is an elector of the Parliamentary constituency. Under section 81 an election petition may be presented by any candidate for the election or any elector. In the explanation to Section 81, an elector is defined as meaning a person who is entitled to vote at the election to which the election petition relates, whether he has voted at such election or not. In his election petition, Banbehari Mohanty stated in paragraph 1 that he is an elector to the Parliamentary constituency. He did not, however, specify his number in the electoral roll, and an interrogatory asking for the information was served on him by the respondent. The reply to the interrogatory was furnished by the petitioner on 30th June, 1962, the petitioner stating that his name occurred against Sl. No. 76 of Part 321 page 605 of Salepur Mahanga constituency, and in the electoral roll, his house is mentioned as house No. 25, his village as Mantiri, Police Station Salepur and his Gram Panchayat at Raisungura. It may be mentioned that Salepur-Mahanga was a double-member constituency in 1958 and the election of 1962 took place on the basis of the electoral roll published in 1958. But at the time of the Parliamentary election of 1962 the constituency had been split up into two separate single-member Assembly Constituencies, namely Salepur and Mahanga, and village Mantiri came within Mahanga constituency *vide* evidence

of P.W. 12, Indramani Misra, Clerk of the Election Office at Cuttack. In the Electoral Roll, against Sl. 76, the name of Banbehari Mohanty is described as the son of Gangadhar Mohanty whereas in the election petition Banbehari Mohanty has described himself as the son of Rangadhar Mohanty. Banbehari Mohanty deposed in the case as P.W. 13; he stated that Gangadhar is the name of his father's elder brother; and the family was a joint family and Gangadhar was the Karta of the family as the eldest male member, the suggestion being that the name of the Karta of the family was wrongly entered in the electoral roll as his father's name. He stated that his mother, his wife and his brother were also voters and their names were entered in the voter's list of 1958, and his mother Suryamani Devi was correctly described as the wife of Rangadhar Mohanty. The name of his wife Sakuntala was also entered correctly as the wife of Banbehari Mohanty. His mother and wife were shown as belonging to the house No. 25, the same as that of Banbehari Mohanty. Further, Banbehari Mohanty deposed that at the Parliamentary election of 1962 he cast his vote at Kusumbi polling station, and that when the Polling Officer asked his father's name and he stated that it was Rangadhar Mohanty, the Polling Officer pointed out the discrepancy, and the petitioner told him that it was probably a printing mistake. The Sarpanch of Raisungura Gram Panchayat was present at the polling station and he corroborated the statement of Banbehari Mohanty and thereupon he was permitted to vote. There is the evidence of Brahmananda Satpathy, the Sarpanch of Raisungura, who deposed in the case as P.W. 10. He said that village Mantiri is within his Gram Panchayat, and he knew the petitioner Banbehari Mohanty, and his father Rangadhar, and that at the time of the Parliamentary election he acted as the Polling Agent for Surendra Mohanty at Kusumbi polling station, and when the Presiding Officer of the Polling Station pointed out the discrepancy as to the father's name of Banbehari Mohanty when Banbehari Mohanty came to vote, Banbehari told him that it might be a printing mistake and referred to the witness, and the witness identified him as Banbehari Mohanty son of Rangadhar Mohanty; and then Banbehari was permitted to vote and a ballot paper was issued to him. The witness also stated that Gangadhar Mohanty had only one son alive, namely, Gagan Behari Mohanty and there was no other Banbehari Mohanty in Mantiri village.

It was suggested in cross-examination to Banbehari Mohanty that Gangadhar had another son named Banbehari Mohanty. Banbehari denied the suggestion, saying that Gangadhar had no surviving son named Banbehari. He said that he had heard from his old family members that Gangadhar had two other sons born before the only surviving son Gagan Behari, but those sons died before the birth of the petitioner Banbehari and he did not see them. It was also suggested to Banbehari Mohanty that he was really one Mansur Ali and the name M. Ali was tattooed on his left fore-arm. Banbehari was called upon to display his left fore-arm and he showed the tattoo mark on his left fore-arm which might be read as S. M. Ali or as B. Mohi. Banbehari stated that it was his half signature B. Mohanty and the first letter was 'B'. The respondent produced no evidence whatsoever in support of the two suggestions, namely, that Gangadhar had another son named Banbehari or that Banbehari was really one Mansur Ali personating as Banbehari. On behalf of the respondent as many as 47 witnesses were examined, but not one witness was produced to challenge the identity of Banbehari Mohanty as the elector whose name was recorded against Sl. 76 at page 605 of Salepur-Mahanga Assembly Constituency. There is, therefore, no reason to disbelieve the evidence of Banbehari Mohanty that the tattoo mark appearing on his left fore-arm is his own signature as B. Mohanty. Gagan Behari Mohanty, son of Gangadhar Mohanty, also deposed in the case as P.W. 11 and he fully supported the case of Banbehari Mohanty as to his identity. Banbehari also produced two other witnesses to prove his identity viz., P.W. 8 Sura Nath Das, Ward Member of Mantiri, and P.W. 9 Jitendranath Mohanty, clerk of Christ High School, Cuttack, who proved an admission Register showing admission of Banbehari Mohanty and Rasbehari Mohanty, sons of Rangadhar Mohanty of village Mantiri on 12th January, 1938. Banbehari Mohanty also proved by calling P.W. 12 Indramani Misra, Election Clerk of Cuttack District Office, that after the Parliamentary election Banbehari Mohanty applied for the correction of his father's name in the Electoral Roll and that the correction was allowed by the Election Officer without any objection. The application for correction was allowed on 10th September, 1963, after publication of the application for correction and calling for objection, if any, vide the evidence of P.W. 12. The application for correction was no doubt made after objection had been taken as to the identity of the petitioner Banbehari Mohanty in the Election case, but Banbehari Mohanty's explanation appears to be acceptable, namely that it was only at the time when he went to vote in February, 1962, that he found out that there was a mistake as to his father's name in the Electoral Roll, and apparently thereafter he did not bother, as he was permitted to vote on the identification by the Sarpanch of his

Gram Panchayat, until objection as to his identity was taken by the respondent. Mr. Asok Das on behalf of the respondent has urged that there is an express rule by which a Presiding Officer or the Polling Officer of a polling station may overlook a clerical or a printing mistake if satisfied as to the identity of a person as the elector in respect of whom an entry has been made, *vide* rule 35 sub-rule (4) of the Conduct of Election Rules 1961, but that there is no rule for overlooking such errors in the electoral roll in the case of an elector who files an election petition under section 81 of the Act. The short reply is that in respect of an election petition under section 81, no such express provision is necessary, because an election petition is tried out as a Civil Suit, and both parties therefore have the opportunity to adduce evidence to the identity of a petitioner as an elector if the point is at issue, and the Tribunal will necessarily make a finding on the point; but the Polling Officer or a Presiding Officer at the Polling Station has to make a quick summary decision and therefore a rule has been thought necessary for his guidance. It has already been mentioned that under the explanation to Section 81 an elector means a person entitled to vote at the election to which the election petition relates. Section 62 of the Act provides that no person who is not for the time being entered in the electoral roll of any constituency shall be entitled to vote. Thus the right to vote and the right to file an election petition depend on the same qualification, namely, being entered in the electoral roll of the constituency. If, therefore, a person is allowed to vote after disregarding any printing or clerical error in his description in the electoral roll, it follows that a person must be entitled to file an election petition in disregard of any printing or clerical mistake in his description in the electoral roll. Mr. Ranjit Mohanty appearing for the petitioner cited a number of cases in which misdescription as to father's name of even a candidate for election has been disregarded. Reference may be made to *Haridas versus Hira Singh Pal*, IV E.L.R. 466. In that case the name of the father of the candidate Ram Das was Jagan Das, but Jairam Das was stated in the electoral roll; the Tribunal held that the nomination paper had been rightly held valid, because when there is no doubt about the identity of the candidate, error in the description in his father's name is immaterial. Similarly, in *Satis Chandra versus Ganga Singh*, VII E.L.R. 38, the name of the candidate's father was given as Prabhudayal and not Prabhu Lal as entered in the electoral roll, but there being no doubt as to the identity of the candidate, rejection of the nomination paper because of that discrepancy was held to be wrong.

It is not necessary to mention any other case. It is a matter of common sense that slight error in printing or clerical error is to be disregarded if there is no doubt as to the identity. The petitioner has adduced sufficient evidence to prove his identity and the respondent who challenged the identity has not produced any iota of evidence in support of the challenge. Mr. Asok Das mentioned at one stage that the petitioner did not produce his mother or his full brother as witnesses; but the respondent might have discharged the burden on him by producing the mother and the brother. If it is urged that it was not possible for the respondent to produce the mother or the brother of the petitioner because of their relationship that is an admission as to the identity of the petitioner as the son of Rangadhar Mohanty. This issue is therefore found in favour of the petitioner namely that he is an elector.

Issue No. 3.—This issue relates to the question whether ballot papers were found missing from the ballot boxes and if so how many and how it would affect the case. In para 6 of his election petition Banbehari Mohanty mentioned that a large number of votes was missing and a certain number of votes had been cancelled illegally and had not been taken into account. At the trial, however, the witnesses for the petitioner who were present at the Counting Halls, namely, P.W. 2, 3, 6 and 13 did not say anything about ballot papers being thrown away or illegally cancelled. Reliance was made on the entries in Ex. XVII, the detailed statements in form 20 in respect of each Assembly constituency, annexed to the result sheet in form 20 which were drawn up by P. R. Chandra when announcing and then declaring the result. It appears that in Ersama Assembly Constituency, taking all the 71 polling stations into consideration, 10 ballot papers were missing or cancelled. At Tirtol constituency taking all the 60 polling stations into consideration, 5 ballot papers were missing or cancelled. At Salepur constituency taking all the 71 polling stations into consideration, 8 ballot papers were missing or cancelled. There is no entry 'missing' or 'cancelled' against the remaining Assembly constituencies. There is nothing to show that the cancellations were done illegally. There is provision in rule for the cancellation of a ballot paper when it is spoilt, and the presumption is that the cancellation was done in accordance with the rules. As to the missing of ballot papers, the total number of ballot papers found on opening a ballot box was checked against the entry in the ballot paper account, which is to be maintained by the Presiding Officer at

each polling station, and when one short ballot paper was found, an entry was made that one was missing. It does not appear that at any polling station more than one was missing; and the number missing altogether is very few. The missing ballot papers can easily be explained, for although under the rules a voter is to insert the ballot paper into the ballot box in the presence of the presiding Officer, it is quite possible, particularly when there is a rush, for a voter to take away his ballot paper without putting it into the ballot box. This appears to have been done in a very few cases when it is remembered that over 2 lakh votes were cast altogether at the Parliamentary election at Kendrapara. The finding is that 15 ballot papers were missing and 8 were cancelled, but there was no illegality about it and this does not affect the case at all.

Issue No. 4.—The 4th issue relates to the question whether any ballot papers were wrongly cancelled. This has already been dealt with in dealing with Issue No. 3 and the reply is in the negative.

Issue Nos. 5, 6, 8, and 12.—These issues are concerned with the result of scrutiny of used ballot papers and they will be dealt with subsequently along with the additional issues, which also relate to the result of the scrutiny of the ballot papers.

Issue No. 7.—According to the petitioner, Banbehari Mohanty, as also the petitioner Surendra Mohanty, it was notified that the counting of votes would take place in the premises of the S.D.O.'s office building at Kendrapara, but the counting actually took place in the Hall in the S.D.O.'s Office premises and in the Municipal Hall at Kendrapara, and the counting at the latter place was unauthorised. An issue arising out of this averment was not framed in case No. 1, but in case No. 54 only. Surendra Mohanty who deposed as P.W.7 stated that he had only received the notification Ex. III dated 6th February 1962 wherein it was stated that the counting of ballot papers of Kendrapara Parliamentary constituency would take place on 26th and 27th February in the premises of the S.D.O.'s Office, Kendrapara, but at two places under two Presiding Officers. In cross-examination he was shown the notice Ex. 'B' which was a notification issued by G. V. L. N. Murty, the S.D.O. and Assistant Returning Officer, Kendrapara dated 10th February 1962 wherein it was stated that the counting on 26th and 27th would take place at the Municipal Hall and at the premises of the S.D.O.'s Office building at Kendrapara. It was also specified that the counting of ballot papers of Salepur, Ersama and Tirtol would take place at the Municipal Hall under the supervision of the A.D.M. Sri P. R. Chandra, and that the counting of ballot papers of Patkura, Kendrapara and Rajnagar and Mahanga Assembly Constituencies would take place at the S.D.O.'s office building under the supervision of the S.D.O. Surendra Mohanty denied that he had received such a notice. But the notice Ex. 'B' shows that it was endorsed both to Surendranath Dwivedy and Surendra Mohanty, and there is reason why Surendra Mohanty should not have received it. Further, the evidence of the petitioner's witnesses clearly shows that the requisite number of Counting Agents of both the parties attended both the places of counting, viz., in the S.D.O.'s office premises and in the Municipal Hall. The Municipal Hall, according to the evidence is situated about 100 yards or less from the S.D.O.'s office building at Kendrapara, and even if it is assumed that Surendra Mohanty did not actually receive a copy of the notice Ex. B, his local agents must have been aware from before that the counting would be taking place at the Municipal Hall and in the S.D.O.'s office building and not at two places within the S.D.O.'s office building, and they made arrangements accordingly. I find, therefore, that counting did not take place at any unauthorised place, and even if Surendra Mohanty did not receive a copy of the notice Ex. 'B', it did not in any way affect the case.

Issue Nos. 9, 10 and 11.—These issues are identical with Issue Nos. 1, 2 and 3 of Case No. 1 of 1962 and have already been dealt with.

Issue No. 13.—This issue relates to the question whether the postal ballots were all counted. According to the case of the petitioner, as set out in the Election petition, Sri P. R. Chandra gave out that there are 30 postal ballot papers to be counted but only 25 ballot papers were recorded in form 20, and 5 were not accounted for. But the evidence is different. P.W.2 Narsing Sahu stated that Murty Babu said that the postal ballots were 30 and he brought out the postal ballots as directed by Chandra Babu, and when the postal ballots were opened they were found to be 25 in number, of which 20 were found to be in favour of the Congress candidate and 5 in favour of the P.S.P. candidate. It does not appear from his evidence that 5 postal ballot papers were not accounted for, but actually 25 postal ballots were there even though G. V. L. N. Murty might have stated under a misapprehension that there were as many as 30 postal ballots. P.W.6, Purusottam Naik stated that when postal ballots were counted it was found that the Congress candidate had obtained 20 and the P.S.P. candidate 5,

but before postal ballots were counted Sri Murty stated that there were 30 postal ballots. It is significant that when G. V. L. N. Murty was examined for the petitioner as P.W. 31, he was not questioned about it. P. R. Chandra was also examined as a court witness but he was not questioned about the number of postal ballots. It is therefore, clear that there is no substance in the allegation of the petitioner that 5 postal ballots were not accounted for. I find that all the postal ballots were counted and accounted for.

Issue No. 14.—The petitioner, Banbehari Mohanti made the allegation that P. R. Chandra had not been validly appointed as Assistant Returning Officer. This issue, is, however, not pressed at the hearing. P. R. Chandra stated that he had been appointed as Assistant Returning Officer, and that the District Magistrate who was the Returning Officer for the whole district authorised him to declare the result for Kendrapara Parliamentary constituency. This statement of P. R. Chandra was not challenged. I find, therefore, that P. R. Chandra was validly appointed as Assistant Returning Officer.

Issue Nos. 15 and 16.—These issues are not pressed and no evidence was at all adduced in support of the corresponding allegations. These issues are therefore answered in the negative.

Issue No. 17.—In paragraph 41 of his election petition Banbehari Mohanty alleged that in Balisahi booth of Salepur Assembly Constituency a Polling Agent of Surendranath Dwivedy performed the functions of the Polling Officer and exhibited the symbol of Surendranath Dwivedy and was canvassing for votes in favour of Dwivedy within the booth. On this point there is evidence of P.W. 13, Banbehari Mohanty, the petitioner of this election petition. He stated that at the time of election he was working for the Congress candidate and was authorised by him to inspect all the polling booths on his behalf in Salepur Assembly Constituency, and that when he visited Balisahi booth under Salepur Constituency, he found that a Polling Agent of Surendranath Dwivedy, named Golak Chandra Panda was performing the work of a Polling Officer, that he was handing over the ballot papers to the voters and also the instrument of balloting. Banbehari Mohanty stated that he drew the attention of the Presiding Officer and submitted a written objection, and that on his own copy of the objection petition he obtained an endorsement from the Presiding Officer to the effect "He unauthorisedly done". Banbehari Mohanty retained that copy of the objection petition with him and produced it at the hearing, and the petition was marked Ex. IV and the endorsement of the Presiding Officer as Ex. IV (a) (Ex. IV of case No. 54/62). But the original objection petition called for from the Election Office was not forthcoming and it appears that no such petition had been filed before or at last accepted by the Presiding Officer. P.W. 13 could not give the name of the Presiding Officer. The alleged endorsement has no value as evidence. P.W. 13 admitted in cross-examination that he saw Golak Panda was handing over ballot papers and the polling instrument to two or three voters only, and further when he was making verbal complaint before the Presiding Officer, the Polling Officer No. 2 for whom Golak Panda temporarily working came back and took charge. It would appear from the trend of evidence of the witness that the Polling Officer No. 2 went out for personal reasons for about 10 minutes and during that time he may have asked one of the Polling Agents present in the booth to work for him. Even if that be a fact, it does not affect the case, because there is nothing to show that when working as Polling Officer for a few minutes, Golak Panda tried to influence any voter in favour of Surendranath Dwivedy. As regards exhibiting the symbol of his party in the polling booth, this fact is not mentioned in the petition Ex. IV though P.W. 13 says that he saw a badge affixed to Golak's dress. Golak Panda deposed as a witness for the respondent, being D.W. 6. He said that he was working as a Polling Agent for Surendranath Dwivedy at Balisahi booth during the last Parliamentary election, but he denied that he had any symbol or badge or that he worked in place of one of the two Polling Officers even for a few minutes. It was put to him whether he would refuse to work as a Polling Officer for a few minutes if one of the Polling Officers had to go out to answer a call of nature or for some other personal reason, he answered that he would never act as a Polling Officer even in such circumstances. Banbehari Mohanty admitted that he was not the Polling Agent for Surendra Mohanty at Balisahi and there was a regular polling agent of Surendra Mohanty at that booth. It is somewhat peculiar that the polling agent of Surendra Mohanty from that booth did not file any complaint if Golak Panda, the Polling Agent of Surendranath Dwivedy worked temporarily as Polling Officer at that booth. Still I do not think that Banbehari Mohanty would fabricate a document like Ex. IV of case No. 54/62 if there was no substance in his allegation, and I therefore accept his evidence on the point that for a few minutes Golak Panda worked for one of the Polling Officers of that booth. But I find that he did not exhibit any symbol of his party when so working and he did not canvass on behalf of Dwivedy in the booth.

Accordingly, the result of the election was not at all affected by this irregularity, if any.

Issue No. 18.—This is identical with Issue No. 5 of case No. 1/62 and has already been dealt with.

Issue No. 19.—This issue relates to the question whether the respondent, Surendranath Dwivedy caused bullock carts to be hired for conveying the electors to polling booths. In paragraph 44 of his election petition the petitioner stated that Padma Charan Naik and Banshidhar Sahu who were agents for Surendranath Dwivedy hired bullock carts for conveying electors of Rahimpur and Khairabag villages. In paragraph 55 the petitioner stated that Deba Jena and Sanatan Malik, agents of Surendranath Dwivedy, hired bullock carts belonging to Radhu Kandi and the rickshaw belonging to Sura Malik to convey electors to the polling booths. The petitioner did not however make serious attempt to prove these allegations. The only witness who deposed on the point is P.W. 2 Narsing Sahu, who was polling agent for Surendra Mohanty on 23rd February 1962 at Gulnagar polling station. He said that Padma Charan Naik and Bansidhar Sahu were acting at that polling station as polling Agents for Surendranath Dwivedy, and that he saw two bullock carts carrying voters within 100 yards of the polling station—one cart being driven by Pitambar Sahu and the other cart by Gourang Sahu. He said further that Khairabag village was within the jurisdiction of Gulnagar Polling Station and some Muslims reside there and he saw some Muslim women in Purdah coming by one of the carts. The witness saw male voters in the other cart and he knew one of them, his name being Dhani Naik. The witness questioned Dhani Naik who told him that he was indisposed and so Padma Charan Naik sent a bullock cart to him to bring him. The witness learnt Pitambar Sahu, the cartman who brought the women voters that Padma Charan Naik had sent the other cart to fetch the Muslim women. The witness stated that he filed an objection in writing before the Presiding Officer of the Polling Station, but the Presiding Officer refused to accept the objection. Neither Dhani Naik nor Pitambar Sahu were examined and therefore the statement of the witness remains hearsay evidence, and the fact alleged is not proved. The respondent examined a witness namely D.W. 23, Brahmananda Prusty, to counter the evidence of P.W. 2. He said that he cast his vote at Gulnagar Polling Station at the last Parliamentary election. He said that he was at the Polling Station for half an hour between 12-30 and 1 P.M. and during that time he did not see any bullock cart bringing voters to the polling station. He said that Padma Charan Naik and Banshidhar Sahu who were working as Polling Agents for Surendranath Dwivedy at the time of Parliamentary election have since joined the Congress Party. This was to explain why these two persons were not called as witnesses by the respondent. The evidence of D.W. 23 does not show that voters could not have been brought by bullock carts to Gulnagar polling station; but as already pointed out, the petitioner did not adduce any direct evidence on the point. What he heard from other persons is not evidence to prove an allegation in court. It must, therefore be held that the allegation has not been proved and therefore the issue must be answered in the negative.

Issue Nos. 20 to 27.—In paragraphs 45 to 58 of the petitioner's election petition, certain other corrupt practices supposed to have been committed by Surendranath Dwivedy or his agents were mentioned, and these issues were drawn up on the basis of those allegations. No evidence was adduced by the petitioner to substantiate the allegations. The petitioner, Banbehari Mohanty, deposing as P.W. 13 stated at the end of his examination-in-chief that regarding the corrupt practices alleged by him, in view of the long pendency of the election cases, he did not propose to give detailed evidence. In fact he did not adduce any evidence at all regarding the allegations which formed the basis of those issues. Issue Nos. 19 to 25 must, therefore be answered in negative. Issue No. 26 must be held not to have been proved and issue No. 27 does not arise in the circumstances.

Issues relating to ballot papers.—Issue Nos. 5, 6, 8, 12 and 4 Additional issues.

Before discussing them it is necessary to decide on a preliminary legal objection urged by the learned counsel for the respondent.

It has been mentioned before that the Tribunal by its order dated 18th August 1962 allowed the prayer of the petitioner Banbehari Mohanty for inspection of the used ballot papers and on 21st August 1962 he allowed a similar petition of the respondent for inspection of the used ballot papers; and that the Tribunal in making the order for inspection pointed out that the petitioner has to specify which valid ballot papers have been wrongly rejected, which invalid ballot papers have been wrongly accepted and which votes for Surendra Mohanty have been wrongly counted in favour of Surendranath Dwivedy, and that he could not furnish the particulars unless the inspection be allowed; and that the Tribunal

relied on the authority of the Supreme Court decision *Bhim Sen V. Gopali & others*, 22 E.L.R. 288. The counsel for the respondent has urged that the law on the subject has now been restated by the Supreme Court in a later decision. *Ram Sewak Yadav V. Hussain Kamil Kidwai and others*, A.I.R. 1934 S.C. 1249, that under the law therein laid down the inspection of the ballot papers could not have been allowed in the present case; and the law laid down by the Supreme Court being presumed to be the law from the beginning the order allowing the inspection of ballot papers is wrong and illegal, and should be ignored, and the case decided on the other materials before the Tribunal. The learned counsel for the respondent has also urged that on the authority of the decision in *Ram Sewak Yadav's* case, a Division Bench of the Punjab High Court consisting of *Falshaw C. J.* and *Grover J.* in the case *Giani Kartar Singh V. Jagjit Singh & others*, held that an order for inspection of ballot papers allowed by the Tribunal was wrong and illegal and disposed of the case on other materials.

In the case *Ram Sewak Yadav V. Hussain Kamil Kidwai and others*, A.I.R. 1964 S.C. 1249, the Supreme Court laid down the law as follows:—

"An order for inspection may not be granted as a matter of course: having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled:—

- (i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and
- (ii) the Tribunal is *prima facie* satisfied that in order to decide the dispute and to do complete Justice between the parties, inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts, or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection".

In the above decision the Supreme Court did not lay down the exact nature of material facts to be set out in such a case in order to comply with the requirements of Section 83 sub-section (1) clause (a) of the Representation of People Act 1951. The Supreme Court referred to rules 53 to 64 of the Conduct of Elections Rules 1961, and then proceeded to observe that it was clear that at every stage in the process of scrutiny and counting of votes the candidate or his Agents have an opportunity of remaining present at the counting of votes, watching the proceedings of the Returning Officer, inspecting any rejected votes and to demand a recount; therefore a candidate who seeks to challenge an election on the ground that there has been improper reception, refusal or rejection of votes at the time of counting has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinised and opened, and the votes were counted; and he has also an opportunity of inspecting rejected ballot papers, and that these circumstances must govern the nature of the statements of material facts required to be set out in the election petition. It appears that in the election petition by *Kidwai*, it was averred in certain paragraphs that numerous ballot papers cast in his favour were wrongly included in the bundles of the respondent and that ballot papers containing marks clearly indicating the intention of the voters were wrongly rejected as invalid; and ended up by saying that the petitioner was confident that if the votes actually cast in favour of the petitioner were counted as votes of the petitioner and if the improperly accepted votes which had been counted in favour of the other respondents were taken out and if the ballot papers were correctly sorted, counted and bundled the petitioner shall be found to have obtained a majority of votes. It was held that these averments were not sufficient statements of the required particulars.

Each case must, however, be judged on its own facts, and it appears that the decision in the aforesaid case was influenced by the fact that *Kidwai* failed to adduce evidence in support of his allegations relating to improper acceptance or rejection of ballot papers. In that case the Tribunal had rejected the prayer for inspection of ballot papers, but had observed that if in future facts were brought out to show that in the interest of justice, inspection of ballot papers should be allowed, necessary orders allowing such inspection would be passed; but, still, *Kidwai* failed to adduce any oral evidence and merely filed another application for inspection which was naturally rejected by the Tribunal; and the Supreme Court held that such an order of rejection by the Tribunal was quite correct on the facts of the particular case.

In Giani Kartar Singh's case, (First Appeal from Order No. 3E/64) Grover J. went further than the Supreme Court and specified the nature of the statement of particulars required in such a case and observed as follows:—

"Dr. Jagjit Singh, who was the petitioner before the Election Tribunal, had to satisfy the statutory requirements of Section 83(1)(a) in the light of the observation made by their Lordships, and a perusal of his allegations in the petition..... shows that he has failed to give all the material facts which could have justified the Tribunal in allowing inspection after a *prima facie* case had been made out in support of the claim for inspection..... Dr. Jagjit Singh did not give any particulars of the polling stations at which those votes were polled (i.e., votes illegally rejected by the Returning Officer). The still more important feature is that no particulars were given with respect to the number of votes cast in favour of the appellant which allegedly were accepted though they ought to have been rejected, nor was anything stated about the polling stations at which those votes were cast, nor the reasons for which those votes should have been rejected..... No lists of the votes intended to be objected to or the heads of objection to each of those votes were given, which seems to be the essence of the rules to be found in Halsbury, which were approved by Their Lordships in Jabar Singh's case.... It will not be out of place to mention that Dr. Jagjit Singh admitted that he did not make any complaint in writing to the Chief Electoral Officer or the Election Commissioner about the alleged irregularities at the time of counting as mentioned in his election petition."

With due respect it appears to me that the observations of Grover J. relating to the requirement for supplying the list of votes intended to be objected to in the election petition cannot be accepted as correct. It is true that in the case of *Jabar Singh V. Genda Lal*, A.I.R. 1964 S.C. 1200, their Lordships referred to the rules in Halsbury's Laws of England Vol. XIV, paragraphs 553 and 554, and the following extracts were quoted from Halsbury (1208):—

"Where a petitioner claims the seat for an unsuccessful candidate alleging that he had a majority of lawful votes, either party must six days before that appointed for the trial, deliver to the master, and also at the address, if any, given by the other side, a list of the votes intended to be objected to and of the heads of the objection to each of those votes."

It appears that the extract refers to the supply of the numbers of votes and the heads of objection six days before the trial and does not refer to the contents of the election petition. In fact under the English law it is not possible for a petitioner to supply the numbers of votes without inspection of the ballot papers, for the Counting Agents and candidates are not permitted to take note of the numbers printed on the ballot papers at the time of counting of votes. This will appear from rule 46(4) of the English Parliamentary Election Rules quoted below:—

"46(4)—The Returning Officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions from preventing any person from seeing the numbers printed on the back of the papers".

In suitable cases a petitioner in an English election case obtains an order for inspection of the ballot papers and then supplies the necessary particulars as to the numbers of votes sought to be challenged and the heads of objection at least six days before the date fixed for the trial. Rule 57 of the English Parliamentary Election Rules provides for obtaining such an order, the rule being as follows:—

"57. (1) An order—

- (a) for the inspection or production of any rejected ballot papers in the custody of the clerk of the Crown, or
- (b) for the opening of a sealed packet of counterfoils and certificates as to the employment on duty on the day of the poll, or the inspection of any counted ballot papers in his custody—may be made—
 - (i) by the House of Commons, or
 - (ii) if satisfied by evidence on oath that the order is required for the purpose of instituting or maintaining a prosecution for an offence

in relation to ballot papers, or for the purpose of an election petition, by the High Court or a County Court.

- (2) An order for the opening of the sealed packet of counterfoils and certificates, or for the inspection of any counted ballot papers in the said custody may be made by the Election Court

The Indian law relating to the functions of the Counting Agents at the time of counting of votes is similar. Although there is no rule expressly laying down that at the time of counting, the ballot papers shall be kept with their faces upwards and that all persons must be prevented from seeing the numbers printed on the back of the ballot papers, it is provided by rule 54 of the Conduct of Election Rules 1961 that the Returning Officer shall before he commences the counting read out the provisions of Section 128 to such persons as may be present; and form 18 of the rules prescribed by the Conduct of Elections Rules relating to the appointment of Counting Agents requires a Counting Agent before working as such to sign the declaration that he shall not do anything forbidden by Section 128 of the Representation of People Act 1951 which has been read and explained to him. Section 128 of the Act relates to the maintenance of secrecy of voting and provides that every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy. There is a punishment provided for violation of the rule. If the Counting Agents were permitted to look at the number of ballot papers printed on the back side at the time of counting, the secrecy of voting would be violated, because from the number it might be possible to trace the voter, for at each polling station before the polling is opened, the polling Agent of each candidate is informed of the first and last serial numbers of the ballot papers to be used at that polling Station.

Moreover the evidence in the case shows that one Counting Agent of a particular candidate had to see the work of counting at 3 tables, where two counting assistants and one counting supervisor were working at each table, as is provided by paragraph 6 clause (c) of Chapter VIII of the Hand Book for the Returning Officers, a copy of which was produced at the hearing and marked as Ex. N'. Thus, while six Counting Assistants were sorting out the ballot papers at 3 tables under the supervision of 3 Counting Supervisors the Counting Agent was to see their work and he was not permitted to handle any ballot papers. Rule 56 (3) of the Conduct of Election Rules provides that before rejecting any ballot paper the Returning Officer shall allow each Counting Agent present a reasonable opportunity to inspect the ballot papers, but shall not allow him to handle it or any other ballot paper. There is no provision in fact for allowing inspection of ballot papers which are not rejected but counted as valid. A Counting Agent has, therefore, little opportunity to look at the valid ballot papers as they are being sorted out and counted by the Counting Assistants. The presence of the Counting Agent only tends to ensure that the Counting Assistants shall do their work properly and impartially. It is impossible for any Counting Agent to obtain the number of any ballot papers in respect of reception or rejection of which he is not satisfied. It is true that he may give the polling station number and the constituency number of the ballot papers regarding the rejection of which he has any objection, but that is probably the only further particular that could be given in an election petition before inspection of the ballot papers is allowed.

The learned counsel for the petitioner has referred to certain decisions in support of his contention that inspection was rightly and legally allowed in the present case. In *Keshao Prasad V. A. D. Mani*, 1961 Doabia's Election Cases Vol. 1 p. 133, the Madhya Pradesh High Court has held as follows:

"When an election is challenged on the ground of miscounting or error in counting it is not necessary to give particulars of such errors: it is sufficient to give the grounds for believing that there has been error on the part of the Returning Officer in counting. From the very nature of the case particulars cannot be given before the inspection takes place".

In *Pyndah Venkakanarayana V. S. Malakonda Reddy and others* (Election Petition No. 357 of 1962) decided by the Election Tribunal, Hyderabad, it was observed as follows:

"In regard to the right of a candidate to ask for recount it may be taken to be a settled law that no candidate is, as a matter of right, entitled to a recount or scrutiny in the usual course. He has to make out a

prima facie case for the same and satisfy the Tribunal that the return was not accurate and that a scrutiny and recount is necessary in the interest of justice. The English law is also to the same effect, laid down as early as 1886 in Stepney, Tower Hamlet's case (4 O'nally and Hard Castle's Report of Election Petitions p. 34). It has also to be stated that a recount and scrutiny of votes would be warranted in the interest of justice in cases where there is a narrow majority, and where the allegation is that there has been a violation on the part of the Returning Officer in observing a statutory rule, in the matter of validating the ballot papers. In all such cases, actual proof that the calculation of the votes was wrong is unnecessary. If there is an allegation supported by an affidavit (or evidence) that there is cause to suspect the calculation of votes or the distribution of ballot papers, the Court can order a recount (or allow inspection)".

The learned counsel for the respondent has urged that the cases cited on behalf of the petitioner were decided before Ram Sewak Jadav's case i.e., before the law was finally settled by the Supreme Court, and they are, therefore, no longer good law. But the decision in Ram Sewak Jadav's case does not really over-rule these decisions or indeed the earlier decision of the Supreme Court in *Bhim Sen V. Gopali and others*, XXII E.L.R. 288. In *Bhim Sen's* case, para 8 of the petition alleged that the result of the election in so far as it concerns the election of respondents 1 and 2 has been materially affected, *inter alia*, (iii) because respondents Nos. 1 and 2 received votes which were void and (iv) because the provisions of the Representation of the People Act and the orders made thereunder were not complied with. Para 10(a) alleged that the Returning Officer did not himself discharge the duty of rejecting the ballot papers, and that being a double-member constituency, it was incumbent on the Returning Officer to go into each case of double voting in order to reject one of the two votes cast in contravention of sub-section (1) of section 63 of the Act. Para 10(b) specified that the Returning Officer having failed to discharge his duty of rejecting the ballot papers in contravention of section 63 rule (3) the appellant believed that the respondents 1 and 2 could receive many void votes.

After inspection of ballot papers in the above case, amendment was allowed by which the recital of para 10(b) was altered into "the petitioner alleges that respondents 1 and 2 did receive 37 void votes" and added particulars of 37 void votes. The Supreme Court held that in the context "could receive" really meant "did receive" and not "might have received", and that particulars in regard to the allegations of this kind could be more definitely supplied only after the ballot boxes or containers had been opened and not till then; and that until such inspection it would be difficult, if not impossible, for any party to allege affirmatively how many void votes had been counted in favour of the party declared to be validly elected.

Even though the case *Bhim Sen V. Gopali and others* was more directly concerned with the question whether the amendment of the election petition supplying the required particulars after inspection had been validly allowed, the question whether the inspection was legally allowed, cause to be considered at the same time, and it is not possible to say that the law as laid down in *Bhim Sen V. Gopali's* case was over-ruled by *Ram Sewak Jadav's* case.

As has already been stated, each case must be judged on its own facts. The two contesting candidates in this case polled approximately one lakh votes each and there was a difference of only 66 in a total of approximately two lakh ten thousand ballot papers. It has already been found that after the counting of the ballot papers in all the ballot boxes but before counting of the postal ballots, the position was at first believed to be that Surendra Mohanty was leading by 212 votes. It was only after the totalling was checked that the true position emerged, that Surendranath Dwivedy was leading by 81 votes. In such circumstances, if a petition for recount had been validly made within the proper time, it would naturally have been allowed and recount made. Apart from the mistake in totalling just referred to, another mistake had been made in the process of counting which was corrected subsequently on the representation of the Counting Agent of Surendra Mohanty, namely, in respect of booth No. 9 of Salepur Assembly constituency. It appears from the evidence of P. R. Chandra, examined as a Court witness, that in respect of that polling station it was at first recorded in the Result sheet that Dwivedy had obtained 313 and Mohanty had obtained 126 votes. But the true position was that Mohanty had obtained 313 and Dwivedy had obtained 126 and the correction was made in the result sheet. Mr. Chandra

did not remember whether the correction was made as a result of any representation made by the Counting Agent or by the counting staff themselves found out the mistake and reported the matter to Mr. Chandra; and he said that it might be that the Counting Agent of a party had made a complaint to him. There is definite evidence of P-W 6, Purusottam Naik that he pointed out the mistake to the Assistant Returning Officer and thereupon it was corrected. In one of the petition for recount which was actually filed, this mistake was mentioned as a ground for allowing recount; and it is not unreasonable that Surendra Mohanty and his partisans should think that if one mistake had been committed there might be other such mistakes which had not been detected. In the circumstances a recount could have been eminently reasonable, and it was to the misfortune of Surendra Mohanty that owing to illness or otherwise he was not personally present in the Counting Hall when the result was announced and he did not have any Election Agent competent to file a valid petition for recount. Surendra Mohanty applied to the Orissa High Court for a directive on the Returning Officer for holding a recount, but the Orissa High Court naturally held that a writ petition was not maintainable. The aggrieved party in order to obtain relief filed this election petition, and in the circumstances the order for inspection which practically involved recount, as made by the Tribunal, in the facts of the case appears to be fully justified.

It has already been mentioned that on 28th February 1962 Surendra Mohanty sent a telegram Ex. VIII to the Chief Election Commissioner complaining that the counting of votes was conducted under suspicious and confusing circumstances; and on 2nd March 1962 another telegram Ex. IX was sent by him to the Election Commissioner complaining of illegal rejection and acceptance of votes. This is mentioned here only because the Punjab High Court in *Giani Kartar Singh V. Jagjit Singh's* case observed that Dr. Jagjit Singh did not even send a complaint to the Election Commission regarding the irregularities alleged by him to have been committed at the time of counting. In the present case such a complaint was sent to the Election Commissioner by Surendra Mohanty. It is true that in Surendra Mohanty's election petition he did not repeat the allegation as to wrongful rejection and reception of votes, but sought to rely on the case that the Assistant Returning Officer had been coerced into breaking the rules and declaring the result. In Banbehari Mohanty's election petition, specific allegations as to wrongful reception and rejection of votes are made in paragraphs 9, 14, 15, 16, 26 and 27. It is true that Banbehari Mohanty did not furnish particulars as to the polling stations where, according to him, ballot papers had been illegally rejected; and it is also true that Banbehari's case that irregularities on the part of the Counting Assistants and Counting Supervisors in the matter of reception, rejection or counting of votes were observed, does not appear to be acceptable on the evidence. On this point P.W. 2, Narsing Sahu, P.W. 3, Radhashyan Agarwalla and P.W. 6, Purusottam Naik gave evidence for the petitioner and they stated that they noticed irregularities in accepting and rejecting votes, and they noticed bias being displayed by some of the Counting Assistants *e.g.* by smiling when the P.S.P. candidate was leading in a particular polling station. But the witnesses admitted that no written objection petition was filed before the Assistant Returning Officers. On the side of the respondent, D.W. 1, Pradipta Kishore Das, D.W. 3, Bhagabat Prasad Mohanty, D.W. 7, Krishna Chandra Mallik and D.W. 8, Akulananda Behera, who all acted as Counting Agents of Sri Dwivedy, said that the work of counting proceeded in a proper manner and that they could see any ballot paper which they wanted to see, and they did not notice any irregularity or bias. The Assistant Returning Officers, namely, P. R. Chandra who was examined as a Court witness and G. V. L. N. Murty, who was examined as P.W. 31, stated that no complaint whatever was made to them as to any irregularity in counting by either party. The District Magistrate, G. Venkataramani examined as D.W. 4 stated that he paid a visit to Kendrapara on the first day of counting and was in the Municipal Hall and the S.D.O.'s counting Hall for about 3 hours altogether and during that time he noticed every one working regularly and no complaint was made to him. But still in view of the peculiar circumstances of the case discussed before, namely that there was a mistake made in noting down the number of votes polled by the parties in respect of one polling station, and that there was a mistake initially in totalling the votes with the result that Mohanty considered himself as a winner and was probably prevented from taking steps in time for filing a recount petition, I hold that the order for inspection involving practically a recount was properly and legally made. I may add that as a result of the inspection, quite a number of errors was found. Some errors are no doubt inevitable when a large number of Counting Assistants were counting the ballot papers rapidly, but there was at least one serious error when 49 valid ballot papers

in favour of Dwivedy were erroneously bundled in a sub-bundle of 50 of the Congress candidate and counted for him.

I may add that even if I were to hold that inspection was wrongly allowed by the order dated 18th August 1962 I could not reverse the order after the order had been made and acted upon, and after an appeal from the order had been rejected by the High Court. There is no valid ground at all for review. It is well known that a change brought about by a reported decision is not a ground for review. Moreover in the present case a review application was made before the Member of the Tribunal who made the order for inspection, namely, Mr. Brij Mohan Lall, and the review application was dismissed by his order dated 20th August 1962. There is no scope, therefore, in any case for a review. Accordingly we must proceed on the view that inspection was not illegally and improperly allowed.

Mr. Asok Das appearing for the respondent argued a further point in this connection, namely, that even if the order for inspection of ballot papers has to stand, in any case the order for amendment of Banbehari's election petition and the recriminations by adding schedules of objected ballot papers was wrong and should be ignored. His argument is that if the election petition did not contain a sufficient statement of material facts in connection with the case of wrongful rejection or wrongful acceptance of votes, amendment of the petition to give further particulars of such material facts was without jurisdiction. In this connection he has cited a Supreme Court decision *Harish Chandra Bajpai V. Triloki Singh*, 12 E.L.R. 461 (also A.I.R. 1957 Sc. C. 444). That was a case where the Supreme Court had to consider the legality of permitting further particulars to be added in respect of corrupt practice. The Supreme Court held that the Tribunal has the power to allow particulars in respect of corrupt practice to be amended, provided the election petition itself has set out the grounds or charges and the petitioner merely seeks permission to add new instances of such charges. In that case, although certain corrupt practices were alleged in the election petition, it was not averred that village headmen or Mukhias appointed by Government had been employed by the successful candidate for canvassing on his behalf; but an amendment was sought to be made, and was allowed by the Tribunal, alleging that certain Mukhias had been so employed. The Supreme Court held that the amendment was wrongly allowed because the original election petition did not say that the services of any such Government servant like village headman appointed by Government had been employed for the purpose canvassing. The Supreme Court observed that apart from the provisions of Section 83(3) of the Representation of the People Act, the Tribunal has the power under order 6 Rule 17 of the Civil Procedure Code to allow amendment of an election petition, but that the power cannot be exercised so as to permit new grounds or charges to be added or to so alter the character as to make it in substance a new petition, if on that date a fresh petition on those allegations would be time barred.

I must hold, however, that the principles as laid down in the above ruling have no application to the facts of this case. The election petition of Banbehari Mohanty did contain sufficient specific allegations about wrongful reception, rejection and counting of votes, and the amendment by including the particulars was allowed in accordance with the principles set out by the Supreme Court in *Bhim Sen V. Gopali and others*, XXII E.L.R. 268. No new case was sought to be made out by the petitioner. The argument that the amendment was without jurisdiction or was improperly allowed cannot, therefore, be accepted at all.

Last Additional Issue.—This issue runs as follows:

“Whether the used ballot papers were properly kept in safe custody after counting or were they tampered with? Have they any evidentiary value?”.

The learned counsel for the respondent has strongly urged that the rules for the custody of ballot papers were not followed, and that in view of the manner in which they were actually kept they have no evidentiary value, for it is not possible to find out which ballot papers were rejected and which ballot papers were counted for which candidate, and so the question of wrong rejection or wrong counting cannot arise. It has further been urged that the condition in which the used ballot papers were found in the steel containers is an evidence in support of the respondent's case of tampering.

Part V rules 50 to 66 of the Conduct of Election Rules 1961 deals with the counting of votes in Parliamentary and Assembly Constituencies and contains

direction as to the mode of keeping the ballot papers after counting. Rule 56 sub-rule (1) is as follows:

"The ballot papers taken out of each ballot box shall be arranged in convenient bundles and scrutinized".

More detailed instructions are given in the Hand Book for Returning Officers, Ex. 'N'. There is an appendix to Chapter VIII of the Hand Book headed "Instructions to Counting Supervisors and Assistants". Paragraphs 5, 8 and 9 thereof are relevant and are quoted below:

"5. Take out the ballot papers, a few at a time, unfold and simultaneously sort them out. Put each ballot paper validly marked for a candidate in the compartment place assigned to that candidate and put each of the doubtful ballot papers in the compartment place marked 'D'".

"8. After all the ballot papers have been so sorted, count the ballot papers in each of the stacks, making them up in lots of 50 and the balance in one lot, tie them up in separate bundles, and note the result of the counting in ink in Part II of the ballot paper account in form 16 and sign the same. While making the ballot papers into bundles arrange the ballot papers in such a manner that the symbols on the ballot papers are all on the same side. While counting the ballot papers in the stack of each candidate, check again that the mark on each paper is clearly in favour of that candidate. Also check the total number of ballot papers found in the box, as noted by you on Part II of the ballot paper account with the number of ballot papers which ought to be in the ballot box according to Part I of the ballot paper account. Any discrepancy should be brought to the notice of the Returning Officer".

"9. Put the ballot paper account on top 'B' bundle immediately below, and below that, the bundles for candidates, 1, 2, 3, etc. Tie up in one packet and leave the packet with the Returning Officer".

Chapter VIII itself of the Hand Book contains instruction to be followed by the Returning Officer or the Assistant Returning Officer in respect of counting of votes. Paragraph 15 clause (k) and (l) require a Returning Officer to take up the packets of stored ballot papers referred to in paragraph 9 of the Appendix one by one and scrutinize and decide about the ballot papers in the doubtful bundle after allowing an opportunity to the Counting Agents to see them, and then put his order of rejection with stamp or in writing, with the grounds of rejection, on the rejected ballot papers in the form 'RNM', 'RMBA', 'RMV' and so on. He must put the ballot papers of the doubtful bundle, which he finds valid for any candidate, in a sub-bundle of the appropriate candidate. Clause (p) requires that thereafter the Returning Officer must incorporate the result in Form 20 and read out the entries to the candidates or cause the entries to be written in a blackboard. Clause (q) is as follows:—

"Finally have all the valid ballot papers put into one container and the rejected ballot papers in another container and have both the containers sealed. Do not put the Ballot Paper Account into either of these containers."

The evidence in this case shows that though the rules in Chapter VIII of the Hand Book were generally followed the valid and rejected ballot papers of each polling station were not put into separate bundles and they were not sealed. The evidence of P.W. 31, G.V.L.N. Murty may be referred to in this connection. He stated as follows:

"I was following the instructions contained in the Hand Book for Returning Officers. Paragraph 15 of Chapter VIII of that Hand Book relates to the procedure for counting of ballot papers and dealing with the ballot papers after counting. Clause (q) of paragraph 15 directs that all valid ballot papers of one polling station should be put into one container and the rejected ballot papers into another container and both the containers should be sealed.

This was not followed but the valid ballot papers were tied up separately in sub-bundles and all the ballot papers of one polling station were tied up with string and put into one big bundle."

The evidence of P. R. Chandra, the other Assistant Returning Officer is to the same effect, although he did not expressly refer to clause (q) of paragraph

15 Chapter VIII of the Hand Book. P. R. Chandra also said that as soon as the counting of the ballot papers of one constituency was over, the used ballot papers were put into one steel box or container and the container was sealed then and there; that the used ballot papers were bundled according to the booths before they were put into containers but the bundles were not sealed, for the container was sealed and that was considered sufficient". It may be mentioned that the bundles of used ballot papers of the 7 Assembly constituencies comprising Kendrapara Parliamentary constituency were put into 8 such steel boxes or containers. D.W. 4, the District Magistrate in whose presence the inspection of the ballot papers started on 15-9-62, described the condition in which the ballot papers were found on opening a container. He said "in every case the valid and the rejected ballot papers were kept in one bundle. By that it is meant that they were tied up into one big bundle one for each polling station, inside these bundles were sub-bundles containing valid ballot papers of each side and the rejected ballot papers were usually kept tied in another separate sub-bundle but in some cases they were kept loose between the sub-bundles of valid papers."

Surendra Mohanty who deposed as P. W. 7 and also Banbehari Mohanty, P. W. 13 gave a description of how the ballot papers had been kept. All the ballot papers of one polling station were tied up into one big bundle. On one side were the sub-bundle containing valid ballot papers in favour of Surendranath Dwivedy and on the other side the sub-bundles of valid ballot papers in favour of Surendra Mohanty, and in between the rejected ballot papers, sometimes tied up into a sub-bundle and sometimes kept loose. The sub-bundles of valid ballot papers in favour of a particular candidate usually contained 50 ballot papers each and one smaller sub-bundle containing the remaining ones after the sub-bundles of 50 had been made.

It may be mentioned here that as distinct from the Hand Book, the Conduct of Election Rules does not specifically prescribe that the rejected ballot papers and the valid ballot papers should be kept in separate sealed packets although it prescribes that the rejected ballot papers should be bundled separately. Thus, rule 56 sub-rule (5) says "All ballot papers rejected under this rule shall be bundled together". Rule 57 sub-rule (3) says "The valid papers shall thereafter be bundled together and kept along with the bundle of rejected ballot papers in a separate packet which shall be sealed and on which shall be recorded the following particulars, namely:

- (a) the name of the constituency,
- (b) the particulars of the polling station where the ballot papers have been used, and
- (c) the date of counting."

Under these rules, therefore, after tying up the rejected ballot papers of a polling station into a separate bundle, that bundle should be kept along with the bundle of valid ballot papers of that polling station and the whole bundle sealed and labelled in the prescribed manner. In the present case the bundles of each polling station were not sealed, nor were these labels containing the required particulars affixed to them. The Assistant Returning Officers have stated that labels were put on the containers showing the number and name of the constituency and the numbers of the polling stations and the date of counting and that was considered sufficient.

The counsel for the respondent has urged that neither rule 57 sub-rule (3) nor clause (q) of paragraph 15 of Chapter VIII of the Hand Book requires that the valid ballot papers of different candidates should be kept separately, and that in the present case by keeping the valid ballot papers separately on two sides of the bundle of ballot papers of a polling station with the rejected ballot papers separating them, the Returning authorities did something not required under the rules, and that the petitioner could not take advantage of this to say that particular valid ballot papers had been counted for a particular candidate. It has already been mentioned however that the Instructions to Counting Supervisors and Counting Assistant specifically require that the valid ballot papers of each candidate should be separately stacked and made into lots of 50 and tied up accordingly and then all the valid ballot papers as well as the rejected ballot papers are to be presented before the Returning Officer for his check and for his decision on the doubtful bundles. It is not said that all the valid ballot papers of the candidates should thereafter be mixed up. Naturally the valid ballot papers of each candidate tied up into sub-bundles are required to be kept separate. It cannot, therefore, be said that the Returning authorities did something not contemplated by the rules.

The Counsel for the respondent also advanced a practically contrary argument, saying that since slips or labels were not attached to the bundles stating to which polling station and Assembly constituency the ballot papers appertained and stating which sub-bundles had been counted for which candidate, it was impossible to find out in respect of a particular ballot paper to which polling station it appertained and for whom it had been counted. This argument, however, appears to be an argument of desparation and cannot be accepted at all. In this connection I may usefully refer to the relevant portion of the evidence of the District Magistrate examined as D.W. 4.

"I found out the booth number of each bundle from the official seal or distinguishing mark at the back of the ballot paper. Before each bundle was opened I gave full opportunity to the parties and their lawyers to inspect the distinguishing marks and there was no objection or disagreement as to the booth to which a particular ballot paper appertains. Inside each bundle there were the valid votes of each candidate tied up in separate sub-bundles and there was no difficulty in ascertaining which ballot papers were counted for which candidate."

It is true that in certain cases some discrepancies were detected, but in all such cases objections were filed and the ballot papers in respect of which such discrepancies detected were included in the schedule of objected ballot papers, by one party or the other. The objected ballot papers were all exhibited in Court, being taken out from the sub-bundles containing them during the examination in Court of P.W. 7, Surendra Mohanty. The objected ballot papers add up to about 7,000. In respect of the remaining 203000 odd ballot papers there was no objection, for they were found kept according to the arrangement as described by the District Magistrate. In this connection it is relevant to refer to a portion of the evidence of the respondent, Surendranath Dwivedy who deposed as D.W. 2. Although he started by saying that in his opinion it was not possible to distinguish which ballot papers were counted for which party and that it was also difficult to ascertain to which polling station a particular ballot paper appertained, he was constrained to admit as follows in cross-examination:

"Although I claim that in view of the manner in which the ballot papers had been kept it was not possible to be definite as to whether a particular ballot paper had been counted for the Congress or the P.S.P. candidate, still on the assumption that if the first ballot paper of a sub-bundle was a vote for a particular party all the ballot papers in that sub-bundle were votes for the same party, we proceeded to prepare schedules of the ballot papers which had been wrongly counted and these schedules were included as annexures. I admit that in the sub-bundles of ballot papers which were taken to be sub-bundles of votes counted for the Congress, except for the 3000 or 4000 votes mentioned in Cols. 3 and 4 of my annexures, the remaining ballot papers were votes for the Congress candidate."

Similarly except for the 3000 or 4000 votes mentioned in Cols. 3 and 4 of Banbhari's revised annexure the remaining ballot papers of the sub-bundles taken to be the sub-bundles of P.S.P. were valid votes for the P.S.P. candidate.

It was argued by the counsel for the respondent at one time that the departures from the above arrangements were such that one could not safely proceed on the assumption that if the last ballot paper of a bundle showed the distinguishing mark of a particular polling station and constituency, all the ballot papers of that bundle would appertain to that polling station or constituency, or that if the first ballot paper of a sub-bundle was a valid vote for a particular candidate all the ballot papers of that sub-bundle were valid votes for the same candidate. Reference has been made in this connection to a statement of P.W. 7 at page 363 of his deposition relating to the ballot papers marked R/2478 and R/2479. These two valid ballot papers, which were found validly marked for the P.S.P. candidate, were lying loose in the bundle of ballot papers relating to booth No. 16 of constituency 109; but on the side on which the Congress sub-bundles had been kept; and another ballot paper marked P/436 which was a valid vote for the Congress candidate was inserted in a sub-bundle of ballot papers of the P.S.P. candidate. A dispute having arisen as to whether these ballot papers R/2478 and R/2479 had already been counted for the P.S.P. candidate, the Tribunal counted and checked all the ballot papers of the Polling Station against the result sheet in form 20 and found that these ballot papers had already been counted for the

P.S.P. candidate. P.W. 31, G. V. L. N. Murty, was questioned about this case and his reply is as follows:

"I cannot say exactly how in this particular case this irregularity was caused, but it is possible that these 3 ballot papers which were mis-placed were originally in the bundle classed as doubtful by the Counting Assistants and Supervisors, and on examination I found two of them valid votes for the P.S.P. candidate and one valid vote for the Congress candidate but these 3 ballot papers were not put inside the proper sub-bundles but they were just pushed into the sub-bundles" (i.e. at random).

Many of the other irregularities found out in course of inspection and recorded at the time of examination of P.W. 7 were caused by mis-placing the ballot papers which had first been put into the doubtful bundle and then found to be valid and accordingly counted for one candidate or the other.

Reference has been made to the fact that 30 ballot papers with the distinguishing mark 104/35 i.e. polling station No. 35 of Mahanga constituency were found tied up in the bundle of ballot papers appertaining to booth No. 48 of that constituency. In this connection, at the time of inspection Surendranath Dwivedy filed an objection petition on 1st October, 1962 (Ex. 0/15) and the fact is also mentioned in the proceedings of the Additional District Magistrate, Ex. DD/2, dated 1st October, 1962. It was for this reason that objection was filed relating to 29 ballot papers marked R/178 to R/206. In view of this fact all the ballot papers of polling station 35 as well as polling station 48 of constituency 104 were counted and checked against the result sheet, and it was found that a bundle of 30 ballot papers appertaining to booth 35 had been mis-placed in the bundle of booth 48, and on including these 30 ballot papers in the ballot-papers of booth 35 and excluding them from ballot papers of booth 48, the number was found to tally with the number noted in the result sheet. It would appear that after the necessary check at the table of the Assistant Returning Officer, when a Counting Assistant finally bundled up the ballot papers for putting them into the steel container, somehow a sub-bundle of booth 35 was tied up with the bundle of ballot papers of booth 48. But from the distinguishing marks as well as the check against the result sheet, the correct position can be ascertained as has been done, and therefore this irregularity can be no further reason for thinking that it could not be ascertained for which candidate a particular valid ballot paper had been counted.

It is not necessary to refer to other irregularities mentioned in the course of argument. The irregularities fall into two classes—some were caused by mis-placing doubtful ballot papers found as valid by the Returning Officer into wrong sub-bundles. Such cases have all been checked up by counting all the ballot papers of the particular polling station and checking against the totals as noted in the result sheet in form 20. The second class of error is where a ballot paper was erroneously counted. As the District Magistrate stated in the course of his deposition, errors were made either way i.e. in favour of and against each of the candidates. The most serious of such errors was in respect of polling station 70 of Salepur Constituency No. 105. One of the sub-bundles of that polling station kept with the sub-bundles of ballot papers counted for Surendra Mohanty contained 49 valid ballot papers for Surendranath Dwivedy topped by one ballot paper validly marked for Surendra Mohanty. These 49 ballot papers have been marked as Ex. R/876 to R/924, and it is the common case of the parties that these 49 ballot papers were mis-counted and should be taken out of the number of valid votes counted for Surendra Mohanty and added to the number of valid votes counted for Surendranath Dwivedy. All the ballot papers of this polling Station were also counted and checked against the result sheet and the result sheet was found to be wrong in respect of these 49 ballot papers. But the total number of ballot papers of the polling station tallied with the total number of ballot papers as mentioned in the result sheet.

In some other polling stations there were only stray cases of ballot papers thus wrongly counted and they have all been included in the schedules and marked as exhibits in course of the deposition of P.W. 7, and D.W. 1, Pradipta Kishore Das was also examined regarding those of the ballot papers which were claimed or challenged by the respondent. When the claim or challenge is found to be correct the result has to be adjusted accordingly, but this does not take away the validity of the general arrangement of the ballot papers, namely, that the valid ballot papers of Surendra Mohanty tied up in sub-bundles of 50 were placed on one side of the bundle, the valid ballot papers of Surendranath Dwivedy tied up in similar sub-bundles were placed on the other side and the rejected ballot

papers were placed in between, and it was therefore possible to find out for which side a valid ballot paper had been counted.

The learned counsel for the respondent also argued strenuously that there had been tampering with the ballot papers after they had been counted and placed in the containers. A number of facts have been mentioned in this connection as items of circumstantial evidence to prove tampering. Thus, it has been stated that the petitioner Surendra Mohanty is an employee of one of the concerns of Bijoyananda Patnaik who was the Chief Minister at the time of election and there is evidence that the then Chief Minister Bijoyananda Patnaik and the Deputy Chief Minister, Biren Mitra took a great deal of interest in the election at Kendrapara Parliamentary constituency. There is evidence not only of their canvassing in the constituency but they appear to have put in as many as 19 telephone calls to the Subdivisional Officer or the Additional District Magistrate at Kendrapara on 27th February, 1962 in order to ascertain the result of the counting. Both P. R. Chandra and G. V. L. N. Murty admitted that there were some calls received from the Chief Minister and the Deputy Chief Minister; and the respondent examined the Telephone Supervisor from the Posts and Telegraphs Office, namely, D.W. 5, Santosh Mohanty, who gave evidence about the number of telephone calls between Cuttack and Kendrapara and Bhubaneswar and Kendrapara. He said that 9 of the calls from Cuttack 176 were booked by the Chief Minister and 10 of the calls were booked by the Deputy Chief Minister from Cuttack 302. The witness could not state who had booked the calls from Bhubaneswar 304. Mr. Asok Das argued at one stage that by asking the Assistant Returning Officers about the latest position of counting the Chief Minister and the Deputy Chief Minister were violating the provisions relating to secrecy of voting; but this is not correct, because the provision of secrecy of voting means that nobody shall reveal how a particular voter has voted, but the latest position in counting is not a secret of which the publication is wrong. It is well known that the latest position before the counting is complete is published in the newspapers, such publications are no offences against the law. It is true that the Chief Minister and the Deputy Chief Minister of the time showed too great anxiety about the result; but this, by itself, is no argument for any irregularity or tampering.

It has next been mentioned that P. R. Chandra informed the Chief Minister or the Deputy Chief Minister that the Congress candidate was leading by 212 votes, and that after the mistake in totalling had been found out he took the trouble of informing the Chief Minister or the Deputy Chief Minister by phone about the correct position before proceeding to announce or declare the result, and that the delay in declaring the result was objected to by Surendranath Dwivedy vide the petitions Ex. FF and Ex. BB, and it has been urged that Mr. Chandra was not acting correctly. But if P. R. Chandra had given a wrong information to the Chief Minister or the Deputy Chief Minister it was quite proper on his part to correct the mistake before proceeding to formally announce and declare the result.

The violation of Rule 57(3) as to sealing of the packets of ballot papers, as also para 15(q) of Chapter VIII of the Hand Book has been mentioned as one of the circumstances in this connection. This point has already been discussed fully. The omission to seal packets is not at all a circumstance going to show that there was any tampering. Surendranath Dwivedy in course of his evidence stated that he wanted to put his seal on the containers in order to ensure that there should be no tampering and that this was refused by the Assistant Returning Officers and that he made a complaint accordingly to the Election Commissioner. Both P. R. Chandra and G. V. L. N. Murty have denied that Dwivedy made such a claim, and Dwivedy did not mention this point in his earlier telegram Ex. AA & Ex. AA/1, and even in the latter Ex. AA/2 which he wrote to the Election Commissioner enclosing copies of the telegrams, which appears to have been received by the Office of the Election Commissioner on 5th March, 1962, but he mentioned the fact only in his application Ex. AA/3, dated 6th March, 1962 for safe custody of the ballot papers. By that time Dwivedy knew of the writ petition for recount which had been filed by Surendra Mohanty, and anyhow the recital in Ex. AA/3 is not a statement made at or about the time and is not therefore admissible as a corroborating evidence. The denial of the two Assistant Returning Officers on this point must be accepted, particularly because on one point at least Surendranath Dwivedy appears to have given deliberately false evidence. Thus, he stated in his examination-in-chief that 15 or 20 minutes after the result had been formally declared a petition purporting to have been signed by Surendra Mohanty asking for a recount was filed and two more such petitions were filed shortly thereafter, and Sri Chandra put the time of receipt on these petitions; that at that time Dwivedy was waiting for his certificate that he had been declared elected, and he noticed that the used ballot papers were being put into the packets and sealed and then they were put into containers. The object of making that statement is that it would conclusively show that the

bundles of ballot papers were tampered with after being put into the containers, because when they were opened at the time of inspection before the District Magistrate from the 16th September, 1962 no seals were found on the packets or bundle of ballot papers. But only Surendranath Dwivedy and no one else of his witnesses spoke of the bundles of ballot papers being thus sealed before being put into the containers, and Surendranath Dwivedy admitted in cross-examination that during the inspection of ballot papers many objections were filed by him or on his behalf, and that in none of these petitions at the time of inspection did he mention the fact that he had seen some packets of ballot papers being sealed on 27th February, 1962, and that during the hearing before Mr. Brij Mohan Lal or Mr. D. N. Roy also he did not file any objection petition expressly stating that although he had seen some of the packets of ballot papers being sealed they were not found in a sealed condition. Both the Assistant Returning Officers stated that none of the bundles was sealed and this is supported by the condition of the bundles found on opening the containers at the time of inspection. The claim on the point by Surendra Nath Dwivedy cannot be accepted at all.

The District Magistrate has stated that he anticipated that there would be an election petition filed in respect of the result of the Parliamentary election at Kendrapara, and therefore he went to Kendrapara shortly after the counting and took charge of the sealed containers which had been kept in the Strong Room of the Kendrapara Sub-treasury and had them transferred by police van to the Strong Room of Cuttack Treasury. On behalf of the respondent it has been urged that there is a discrepancy between the evidence of the District Magistrate and the Additional District Magistrate as to the date on which the District Magistrate took charge of the sealed containers. The Additional District Magistrate stated that on 27th February, 1962, after completing the work in connection with the counting and declaration of the result as regards the Kendrapara Parliamentary constituency, he stayed for the night at Kendrapara because he received a certain telegram from the District Magistrate, and on the following day i.e., 28th February, 1962, the District Magistrate came to Kendrapara and took charge of the sealed containers in his presence and only thereafter the A.D.M. returned to Cuttack. The District Magistrate stated that he went and took charge of the steel containers two days after the counting was over, which would mean that he went on the 1st of March and not on 28th February, 1962, but the District Magistrate added that he did not remember the exact date on which he went to Kendrapara to take charge of the steel containers, and that he could get the exact date from his tour diary which, however, was not called for and produced. The other Assistant Returning Officer, G. V. L. N. Murty also stated that he was present on 28th February, 1962, when the District Magistrate came and took charge of the containers with the ballot papers. Accordingly it must be held that it was on 28th February, 1962 and not on 1st March, 1962 that the District Magistrate took charge, and no inference as to any tampering on the 28th February, 1962 can be made from the alleged discrepancy.

It has also been urged that the Election Commissioner by his order Ex. 'E', dated 9th March, 1962, directed the Chief Electoral Officer to take charge of the sealed bundles of valid and rejected ballot papers, and that no report was made to him that the Chief Electoral Officer only took charge of the steel containers and did not verify whether the containers contained sealed bundles. But Ex. 'D', the letter from the Secretary to the Election Commission to the Chief Electoral Officer, Orissa enclosing the order Ex. 'E' by the Chief Election Commissioner specifically states "I am to request that the boxes containing the above mentioned records (ballot papers and other statutory records relating to the election from Kendrapara Parliamentary constituency) be taken over by you, further sealed under your seal and kept in suitable custody e.g., the Treasury at Cuttack. The boxes shall not be opened except under the authority of a competent court or a Tribunal." It is therefore clear that the Chief Electoral Officer was simply required to take charge of the boxes said to contain the packets of valid and rejected ballot papers and he was not required to open the boxes and to check the contents at that stage. There is the evidence of the District Magistrate that he also received a copy of the order Ex. 'E' and that the Chief Electoral Officer came to Cuttack Treasury and put his own seal on the steel containers containing the ballot papers in the presence of the District Magistrate. There was, therefore, nothing irregular.

Another point argued as to the circumstance tending to show tampering is that G. V. L. N. Murty did not seal up the keys of the locks of the containers along with the locks, as was done by P. R. Chandra, but kept the keys of 5 containers in his own custody until the keys were called for from him by the District Magistrate on 15th September, 1962. P. R. Chandra stated that he sealed up the two keys along with the lock of each of the containers, and that was the practice,

so that the keys can be found conveniently when a box is required to be opened. G. V. L. N. Murty stated that he was not aware of any such practice and there is no rule requiring this to be done, and he kept the keys in his own custody; and that when he was transferred out of Kendrapara as Under Secretary to the Government of Orissa, Bhubaneswar, he forgot to make over the keys but he continued to keep them in his own custody until the District Magistrate asked for them. There is no reason to presume that Murty kept the keys in his own custody so that he might open the boxes and do tampering. If he wanted to do tampering by going into the Sub-treasury Strong Room at Kendrapara and opening the containers he could do so whether or not the keys had been sealed along with the locks. He, as well as P. R. Chandra, denied the suggestion put in cross-examination that at the suggestion of the Chief Minister or the Deputy Chief Minister any tampering was done by them or with their consent.

The circumstantial evidence sought to be built up by the counsel for the respondent vanishes into nothing in the face of the fact that the examination of the ballot papers revealed no tampering in favour of the Congress candidate. Reference has been made to the judgment of the Election Tribunal which tried the election case relating to Bonda Parliamentary constituency (Election Petition No. 339 of 1962, Allahabad). In that case there was a finding of tampering with the connivance of the Deputy Commissioner and 2000 or more ballot papers were actually found tampered with. There was evidence of a Seal Expert to prove that tampering had been done. In the present case, not only is there no evidence of tampering of any ballot paper but no suggestion was made to P.W. 7 who extracted and proved all the disputed ballot papers, that any ballot paper had been tampered with. The result of the scrutiny of the disputed ballot papers is rather slightly favourable to the respondent, clearly showing that no tampering in favour of the Congress candidate had been done after the counting.

There was also an argument that the District Magistrate had no authority to open the containers for the purpose of inspection when the Election Commission had put them in charge of the Chief Electoral Officer. But Ex. 'D' referred to above expressly provided that the containers might be opened at the instance of a Tribunal. The Tribunal passed an order, dated 21st August, 1962, containing self-contained instructions to the Officers conducting the inspection. Therein Mr. Brij Mohan Lall ordered that the inspection shall take place at Cuttack in the office of the District Magistrate or any other place at Cuttack which the District Magistrate may earmark for the purpose, and that the District Magistrate shall either himself conduct the inspection or shall depute one or more but not more than 4 responsible public servants of a status not lower than that of a First Class Magistrate to conduct inspection. According to this order of the Tribunal therefore, it was not only permissible but incumbent on the District Magistrate to conduct the inspection and to open the containers as and when necessary. A copy of the order of the Tribunal was also sent to the Chief Electoral Officer, and there is evidence that the Chief Electoral Officer was present throughout the inspection beginning from the first day. Amar Singh was the Chief Electoral Officer at the time of inspection, and he deposed in the case as P.W. 26 and he stated that although he had been placed in custody of the ballot boxes by the Election Commission, it was with his express consent given in view of Tribunal's order, that the District Magistrate conducted the inspection. The objection of the respondent in fact appears to be absolutely groundless.

In view of the circumstances discussed above I find that the used ballot papers were kept in safe custody even though the rules as to the sealing of packets of ballot papers of each polling station were not observed; that the ballot papers were not tampered with; that it is possible to find out for which party a particular valid ballot paper was counted and therefore the ballot papers have evidentiary value.

Issue No. 8.—This issue raises the question whether the Returning Officer and the Counting authorities complied with sub-rules (2) and (4) of Rule 56. Rule 56(2) enumerates the circumstances in which the Returning Officer shall reject a ballot paper. The second proviso to the sub-rule gives a discretion to the counting authorities, being as follows:

"Provided further that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked."

Some further instructions appear in the Hand Book, Chapter VIII paragraph 15 clause (m). A ballot paper is not to be rejected merely because more than one mark has been made in the column of one candidate or the mark is only partially

within the column of one candidate and the rest of the mark is in the blank area or outside the ballot paper; or the original mark is patently in the column of one candidate but an impression due to wrong folding appears in the column of another candidate; and so on.

The petitioner and the respondent and their Agents and Advocates examined all the ballot papers cast at the time of voting in the constituencies for 37 or 38 days in the presence of the District Magistrate or the Additional District Magistrate; and out of approximately 2,10,000 ballot papers each side made a list of about 5000 ballot papers which in its opinion had been wrongly taken to be valid or wrongly rejected. At the time of the hearing only about 7000 ballot papers were exhibited by being put to P.W. 7 at the first instance. But out of about 3100 ballot papers of the 'P' series, being challenged ballot papers on behalf of the petitioner more than half were given up and the claim was maintained only as regards approximately 1300. Similarly on behalf of the respondent although 3844 ballot papers were exhibited by being put to P.W. 7 at the first instance, still when D.W. 1, Pradipta Kishore Das gave his evidence stating the claim of the respondent, namely the successful candidate, the claim in respect of approximately half the number was given up and the claim was maintained in respect of about 1900 ballot papers. In other words, the two sides between them did not ultimately challenge more than about 3200 ballot papers out of 210,000 ballot papers. In the overwhelming majority of cases the counting authorities rightly dealt with the ballot papers in accordance with the provisions of rule 56(2), and rule 56(4), which only provides that the Returning Officer shall record on every ballot paper which he rejects the letter 'R' and the grounds of rejection in abbreviated form either in his own hand or by means of rubber stamp. The Hand Book mentions the abbreviations for rejection usually adopted, namely 'R M V' (rejected for multiple voting), 'R M B A' (rejected for marking in blank area), 'R N M' (rejected for no marking), 'R M' (rejected for mutilation) and so on. 9136 ballot papers were rejected and abbreviated orders of rejection were stamped in the overwhelming majority of these cases, omission being found only in respect of 20 or 25 cases out of 9000 odd.

In some few cases, clear errors were found both in respect of taking a ballot paper as valid and counting it in favour of a particular party and also in the matter of rejection. But in respect of the majority of about 3200 cases to which the challenge was ultimately confined by the parties, the difference is merely due to a somewhat different standard being adopted. For instance, in the case of ballot papers rejected by the counting authorities for no marking but claimed by the parties as valid votes for one party or the other, the seal of the stamp is usually so faint that it cannot be seen at first sight but only in strong light or with the help of magnifying glass the mark comes to view. It is therefore not surprising that when the Counting Assistants were sorting and counting the ballot papers quickly, as they must do in order to get through the counting within a reasonable time, they did not see or ignored the faint markings. The rule and the instructions are that no ballot paper should be rejected merely because marking is faint, and therefore where faint but clear marking of the balloting instrument has appeared, naturally the ballot paper has been taken by the Tribunal to be valid. In respect of ballot papers accepted by the counting authorities to be valid but claimed by the parties as liable to rejection, either on the ground of multiple voting or for some other ground, it appears that in most of the cases there is a clear seal or more than one clear seals in one area and some faint marks—sometimes not distinguishable as an arc of the seal but sometimes so distinguishable, appear in the other area. The counting authorities, relying on the second proviso to rule 56 sub-rule (2), which has been quoted above, apparently concluded that the way in which the ballot paper was marked clearly indicated the intention to vote in favour of the party in whose area the clear full seal or seals appear. I cannot say that the counting authorities were necessarily wrong in doing so; that is a view that certainly could reasonably be adopted. Both the parties, however, agreed that if as against a clear full seal in one area there is even a faint small but distinguishable arc of the seal in the other area, the ballot paper should be held to be bad for multiple voting; this is a principle which Mr. D. N. Roy also adopted and I have also adhered to that principle, for there is some support for that view in a decision of the Orissa High Court, namely, *Rama Chandra Ram V. Raghunath Ray*, Miscellaneous Appeal No. 39 of 1962 decided on 21st August, 1962.

A difficulty is caused by the marginal cases where a seal in the blank area just has or has not crossed the last line towards the Congress or the P.S.P. area. In quite a number of such cases the counting authorities rejected the ballot papers for marking in the blank area, taking the seal to be entirely within the shaded area or the blank area in between the compartments of the two candidates. The

parties, however, have claimed, and it really does appear in many cases, that one or more of the seals have abutted into one of the areas slightly. In such cases where there is a clear abutting, however small, the vote has been taken as a valid vote for the party into whose area the seal has abutted, and the finding of the Counting authorities have been departed from. It may be mentioned that P.W. 7, Surendra Mohanty propounded a theory of abutting by one line as a minimum abutting to be taken into consideration. He explained at page 103 of his deposition what he meant by abutting by a line. The blank area or the shaded area between the compartments of the two candidates in the present case shows 15 parallel black lines with 14 white or grey hands or spaces in between the lines. P.W. 7 stated that by a line he meant the breadth of this space which lies between two adjoining black parallel lines printed in the shaded area of a ballot paper. That, however, is an arbitrary standard, and in the Orissa High Court case cited just now, *Ram Chandra Ram V. Raghunath Ray*, their Lordships considered clear abutting into a particular area, however small, to indicate the intention of the voter to vote for the party into whose area the seal has abutted. P.W. 7 apparently wanted that marginal cases where it is doubtful whether or not the seal has abutted into any area should be left out of consideration, the decision of the counting authorities not being upset in such marginal cases. But it has been considered more appropriate to examine such marginal cases with the magnifying glass, and if the red or purple mark of the seal could be seen beyond the last line towards a particular area, the seal has been considered as abutting into that area. Abutting by a line in the sense that P.W. 7 meant would be somewhat arbitrary, because it would be difficult to guess whether the abutting has been by the particular breadth of space that P.W. 7 defined.

Another disputed matter is where only a part of the arc of the seal or part of the seal has appeared in the blank area, whether the mark should be taken as it is or should be taken to be as it would appear if the circle of the seal were completed. P.W. 7 stated (p. 924 of his deposition) that in case of ballot papers in which an incomplete circle or other mark of the official balloting instrument appears, the ballot paper should be judged not merely on the basis of the existing incomplete marking but on the basis of the marking as it would stand if completed. The learned Advocate for the respondent, however, strongly objected to this view, and argued that every ballot paper must be judged on the basis of the marks appearing on them and not on the basis of any imaginary marking. Rule 56 refers to "the mark appearing on the ballot paper." In clauses (l) and (m) of paragraph 15 of Chapter VIII, and indeed throughout the Chapter, wherever it has referred to the matter, the reference is to "the mark on the ballot paper". By reading the rules and the relevant sub-paragraphs of paragraph 15 of the Hand Book it appears to be quite clear that every ballot paper is to be decided on the basis of the existing marks on them and not by imagining how the ballot paper would look if some incomplete mark on it were completed. Frequently, a voter has put a full clear seal on one area e.g. on the bullocks which is the insignia of the Congress or the hut which is the insignia of the P.S.P. candidate, and there is an incomplete arc or an incomplete seal in the blank area, in many cases if the incomplete seal or the incomplete arc of a seal were completed, it might abut into the opposite area to that where a clear full seal appears. It can never be said in such cases that the intention of the voter is doubtful, that it is not clearly in favour of the party in whose area the full clear seal appears.

Mr. Mitra appearing on behalf of the petitioners referred to certain observations of R. K. Das J. in the decision of the Orissa High Court, *Ram Chandra Ram V. Raghunath Ray*, (Miscellaneous Appeal No. 39 of 1962) in support of his proposition that a ballot paper should be judged after envisaging how it would look if a partial seal or an arc were completed into a circle. The observation of R. K. Das J. is as follows:

"Re-Ex.17—A part of the seal appears in the shaded area whereas the other part while projecting towards the area of the appellant obviously, for shortage of ink or want of sufficient pressure a clear impression of the seal does not appear in his area, though it is clear that the circle of the seal if completed must have gone into the area of the appellant".

Again "in Ex. 17-D—Two incomplete seals have been given partly in the shaded area and partly towards the area of the appellant and the circle of the seals which could not be completed for want of ink or pressure would, if completed, have gone sufficiently into the area of the appellant".

From the observations Mr. Mitra has urged that where an incomplete seal has appeared in the shaded area it ought to be taken as it would stand if the circle of the seal were completed. But as the observations quoted above show, in each of these cases though a clear impression of the seal did not appear in the

appellant's area, a faint impression appeared. It may be said that his Lordship rather relied on the faint impression appearing in the appellant's area than the imagined mark which would appear if the circle were completed.

This is clear from the judgment of Narasimham C.J. In the same case Narasimham C.J. observed "In all these papers Exs. 17 series a portion of the seal has extended into the area of the appellant. It is true that due to lack of ink or want of pressure the arc inside the area of the appellant is somewhat indistinct". But his Lordship relied on the faint extension of the seal into the appellant's area and said nothing about the circle of the seal being imagined to be completed.

In the circumstances it cannot be said in any case that it is a decision of the Orissa High Court that an incomplete arc or seal in the blank area should be taken as it would stand if completed into a circle when judging the validity or otherwise of a ballot paper. That is clearly not the ruling in the above case. As I have indicated, in my opinion a reading of the relevant rules and the instructions in the Hand Book, clearly leads one to the view that the markings are to be taken as they are and not as they would stand if completed. Where a voter has put a completed seal as well as a partial seal or an arc in the ballot paper he sees the picture of the marks made by him, and accepts it as expressing his intention, and clearly his intention must be for the candidate in whose area the full seal has appeared and not to spoil his vote by double marking. In such cases the incomplete marking in the blank area may have been caused accidentally, as by the stamp slipping from the hand of the voter, or the voter might have experimentally made a partial mark in the blank area to see what kind of seal is made by the marking instrument, and then put the full seal with pressure in the area of the candidate for whom he was voting.

I have, therefore, taken the incomplete seals as they stand and not as they would appear if the circle of the seal or the arc were completed; and in this respect I have differed from the tentative opinion which has been recorded by Mr. D. N. Roy in respect of some of the ballot papers.

Another case which is necessary to mention is the stub mark. Rule 39 of the Conduct of Election Rules lays down how a voter has to vote. On receiving a ballot paper he has to proceed to one of the voting compartments and there he has to mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote; then fold the ballot paper so as to conceal his vote and then insert the valid ballot paper into the ballot box and then come away. The mark is therefore to be made with the instrument supplied for the purpose, but the nature of the mark is not mentioned in the rule itself. In the Hand Book, Chapter VII rule 8 it is provided that the Returning Officer must ensure that the polling party of each polling station is supplied with the polling materials shown in Annexure VI. The list of polling materials mentioned in Annexure VI of the Hand Book includes *inter alia* the polling instrument which is described as item 13 "rubber stamp for marking ballot papers" and six rubber stamps are to be supplied to each polling party i.e. to each polling station. Annexure V, showing the form of the ballot paper and instructions to electors for marking ballot papers, says that the Polling Officer will explain to the voter how to record his vote and will give him an inked rubber stamp and that the voter must mark with the rubber stamp on the symbol of the candidate for whom he wants to vote. It is also mentioned that the rubber stamp makes the impression of a cross within a circle, like X. The voter is asked not to make any other mark or thumb impression at the risk of his vote not being counted.

In view of the contents of the Hand Book referred to above, it has been urged on behalf of the petitioner that either the whole circle with cross inside made by the rubber stamp or at least a part of the arc of the circle made with the rubber stamp must appear on a ballot paper to make it a valid vote and that if any other mark appears, the ballot paper should be considered liable to rejection for "no marking". I may point out however, that in spite of this contention of the petitioner, P.W.7 in course of his deposition in several cases claimed a ballot paper as validly marked when only a stub mark appears thereon. Thus in respect of Ex. R/11 he says that there is a stub mark with a faint circle of the seal in the middle over the bullocks and the ballot paper is therefore valid. The circle of the seal inside, however, has to be imagined and is not really visible. In respect of Ex. R/22 he did not even claim that the arc of the circle was faintly visible. He merely stated that there is a stub mark on the bullocks and no other mark on the ballot paper, and that it should be taken as validly counted. In respect of R/144 there is mark of the periphery i.e., there is a hollow square made by the stub, on the bullocks. This also P.W.7 claimed as valid vote. It is true

that in several instances he stated that stub marks are not valid e.g. in respect of P/1054-A which, however, shows a stub mark in the P.S.P. compartment. Similarly in respect of P/1814 where again there is a stub mark in the P.S.P. area P.W.7 claimed that it was not a valid marking.

Mr. D. N. Roy was inclined to accept that view, namely that a mere stub mark where a part of the circle has not appeared is not a valid mark. But a stub mark is also made with the official polling instrument. The official instrument is the rubber stamp, but the rubber stamp consists of a thin piece of rubber fixed in a wooden handle which is a wooden rod with small square ends. G. V. L. N. Murty, one of the Assistant Returning Officer in charge of the Kendrapara election, stated that such marks might have been made by the reverse wooden end of the handle of the stamp, and that it is also possible that such marks were made when the piece of rubber had come off and the stamp was used in that damaged condition. The counting staff in most cases accepted a stub mark in one area and no marking in the other area as a valid marking, although there was occasional departure from this principle. The Division Bench of the Punjab High Court in the case of Giani Kartar Singh V. Jagjit Singh took the view that it was not necessary to make a ballot paper validly marked that the circular seal with the cross inside or at least a portion of the arc of the circular seal must be visible. Grover J. with whom Falshaw C.J. agreed observed as follows:

"I am inclined to the view that the requirement contained in rule 39(1)(b) regarding the use of the prescribed instrument by the voter is merely directory and not mandatory. If the mark is made with the ink of the pad provided for the use of the instrument, but not with the correct side of the instrument, the ballot paper should be taken to be correctly marked".

With respect I agree with this view and accordingly a square mark or a square hollow mark which is clearly made with the stub i.e. the end of the wooden handle to which the thin piece of the rubber is attached or made with the opposite end, as mentioned by G. V. L. N. Murty, has been taken as valid. But a mere linear mark which may or may not have been made by the official instrument has not been taken as valid.

My finding in respect of the issue is that sub-rules (2) and (4) of Rule 56 have generally been complied with; but there have been some errors; and where the error consists in omission to mark rejected ballot papers with the proper order like 'R N M', 'R M V' and so on, the confusion has been cleared up by the Tribunal checking all the ballot papers of the polling station as was done in respect of ballot papers R/1003 to R/1006 and P/180 which are ballot papers of polling station No. 42 of Assembly constituency No. 107, but which though rejected were not marked 'rejected'. It was found on counting and verification against the result sheet that these 5 ballot papers had really been rejected and not counted for either party. The same procedure was adopted whenever there was doubt in respect of an unmarked but rejected ballot paper. These cases are, however, very few and they have not affected the result of election in any way.

As regards the other kinds of error namely, wrongly rejecting the ballot paper or wrongly taking it to be valid or wrongly counting it in favour of a party, these errors are dealt with in the six remaining issues of this group.

Before taking up these six issues, however, it is necessary to dispose of a preliminary point raised by the learned Advocates for the petitioner, namely that where in respect of a particular ballot paper Mr. D. N. Roy has recorded his finding the same should be accepted as the final decision of the Tribunal and should not be reviewed. The examination of P.W. 7 through whom the disputed ballot papers were exhibited took a very long time. The examination-in-chief started on 2nd July 1963 and for about 5 weeks i.e. until 5th August 1963 ballot papers of Exs. P/1 to P/436 were extracted and marked as exhibits and the claim or opinion of P.W. 7 thereon was recorded. During this period very few opinions were recorded by Mr. Roy, practically only in one stray case e.g. P/415 P.W. 7 claimed that there are marks of the official seal resembling scratches on the bullocks and Mr. Roy recorded the following:

"NOTE—There does not appear to be any official seal or part of the seal over the bullocks".

This was merely recording the result of observation and it was not a finding.

After 5th August 1963 the procedure was substantially altered. It has been mentioned before that after the inspection before the District Magistrate was over and after the amendments of the election petition and the recrimination had

been allowed, the petitioner, Banbehari Mohanty prayed recount of the ballot papers without recording the oral evidence, as the inspection had shown that there had been errors made by counting authorities in respect of quite a number of ballot papers. Mr. Brij Mohan Lall dealt with this petition in his order dated 22nd December 1962. Mr. Brij Mohan Lall observed that recount might be held before recording oral evidence provided the circumstances of the case warranted the same, but in the present case there was vehement allegation by the respondent of tampering with the ballot papers, and this question of fact could only be decided by taking oral evidence; and therefore the prayer for a recount before taking oral evidence was rejected. Thereafter the petitioner apparently proceeded on the basis that if he led oral evidence to show that in a substantial number of cases the counting authorities had made errors and that there was no indication on any ballot paper to show tampering a recount might be held without taking further evidence; but thereafter the attention of the Tribunal was drawn to some observations of the Orissa High Court in case *Ram Chandra Ram v. Raghunath Ray*, Miscellaneous Appeal No. 39 of 1962, decided on 21st August 1962, where it was laid down that some one on behalf of the petitioner must take the responsibility of stating on oath that specified ballot papers should have been either counted in his favour or deducted from the total votes polled for the appellant, give the exact number and give the grounds in support of his claim. It was therefore held that a recount by the Tribunal after being satisfied that there were some errors would not be proper and that it was necessary for each party to put into evidence all the ballot papers which the parties claimed as wrongly counted or wrongly rejected or wrongly accepted, and that only thereafter the Tribunal would decide on the point. Thereafter the respondent proceeded to put to P.W. 7 all the ballot papers claimed and challenged by the respondent and between 6th August 1963 and 27th November 1963 Exs. R/1 to R/3497 put to the witness on behalf of the respondent were proved, and thereafter between 28th November 1963 and 14th February 1964 the ballot papers claimed or challenged by the petitioners, namely, P/437 to 3102 were proved and the ballot papers from Exs. P/1 to P/436 which had been proved before were also again put to the witness polling station-wise and therefore not in serial order, because in the beginning the ballot papers Exs. P/1 to P/436 had not been put to the witness polling station-wise but rather at random.

When the ballot papers of the R series were being put to the witness Mr. D. N. Roy recorded his opinion in 65 or 70 cases and then in respect of P series, in 350 or 400 cases. Even then in the beginning he merely recorded the result of his observations and not any finding. Thus, in respect of R/394 where the witness claimed that there was only smudge partly in the blank area and partly in the P.S.P. area, Mr. Roy recorded a note as follows:

"NOTE—This appears to the Tribunal to be an indistinct seal by the official instrument lying partly in the blank area and partly in the P.S.P. area".

Similarly, only the result of observation was noted in other cases like R/635, R/653, R/807 and so on. Thus in respect of R/635 he noted:

"NOTE—The counsel for the respondent says that this was by the instrument of balloting, which may be correct on account of the shape of it".

As the examination of P.W. 7 proceeded the opinion was more definitely expressed and ultimately it came to be recorded as finding but still in the form of a note. Thus, as regards R/1345 Mr. Ray recorded a note "To the Tribunal it seems to be the case of multiple voting and should therefore be rejected as R.M.V.". Here the conclusion to be drawn from the opinion is stated but still it was not a definite finding. Only from the middle of January, 1964 Mr. Roy recorded his notes more strongly. The record made on 11th January 1964 shows the transition from opinion to finding. Thus in respect of P/2102 he merely recorded the note "The Tribunal on careful examination does not agree with the objection of Mr. Kundu and is of the opinion that there is a mark of balloting with the official instrument. It should therefore be rejected for R.M.V." In respect of the next ballot paper, namely P/207 the note recorded is as follows:

"Mr. Kundu contends that the curvature of the arc is so wide that it is not by the official instrument. The Tribunal does not agree with this objection and finds that it is a case of multiple voting and this ballot paper should be rejected for R.M.V.".

But even though the word 'finds' has been used from 11th January 1964 onwards in respect of a number of ballot papers of the 'P' series and then a number of ballot papers of the 'R' series, all this record is in the form of notes in the body

of deposition of P.W. 7. There is no order recorded in the ordersheet or otherwise purporting to make a final finding as to these ballot papers at the time when P.W. 7 was being examined, and although the respondent's advocates were putting their suggestions, no witness for the respondent had been examined to state the claim of the respondent in respect of the claimed or challenged ballot papers. This was done long after. In the circumstances, the notes recorded by Mr. D. N. Roy must be deemed to be tentative finding or in the earlier cases just the result of observation, with or without an opinion. This question was in fact raised before me as soon as I took over charge and joined, a prayer being made by the respondent for fresh examination of P.W. 7 so that the opinions recorded by Mr. D. N. Roy might be avoided. This prayer was rejected in view of Section 88 sub-section (4) of the Act, which provides that where for any reason a vacancy occurs in the office of the Member of Tribunal, the Election Commissioner shall appoint a person to fill the vacancy, and upon his joining the Tribunal the trial of the petition shall be continued as if he had been on the Tribunal from the beginning. But while refusing the prayer of the respondent for fresh examination of P.W. 7 I stated to the parties that the notes recorded by Mr. D. N. Roy would be given due consideration but would not be regarded as final findings but only as tentative findings open to review. In my order dated 16th September 1964, while rejecting the prayer of the respondent for giving the respondent's witness, Pradipta Kishore Das, an opportunity for stating his opinion regarding the 'P' series ballot papers, it was observed that the question whether or not a ballot paper was properly rejected or improperly counted would not depend on an admission which a party's witness may make in Court but would ultimately be decided by the Tribunal after examination of the ballot papers in the light of the principles evolved after discussion with the learned Advocates of the two sides i.e. at the time of hearing the final arguments. Before this has been done, any opinion or a finding as regards a ballot paper must be taken to be tentative and open to review. I may state here that in course of examination of P.W. 1, I recorded my impression of ballot papers in a separate note book; but the impression then recorded was not final but open to further consideration after hearing the arguments of the two sides and further examination of the ballot papers, if necessary. Similarly, though Mr. D. N. Roy recorded his impressions in the form of notes in the body of the deposition, I do not regard them as final findings, and it does not appear to me that Mr. Roy intended them to be his final decisions; because in his order dated 2nd April 1964 he observed that further limited cross-examination of P.W. 7 would be allowed. This would be meaningless if in respect of many of the ballot papers a final decision had already been made.

Accordingly, while considering with respect the opinion recorded by Mr. Roy, I have considered myself free to come to a different conclusion. Ultimately it does not affect the result of the trial because in some cases I have accepted a ballot paper as valid where Mr. Roy's impression recorded is that it was invalid and in other cases I have rejected a ballot paper as invalid though Mr. Roy has recorded his impression that it was valid.

Issue No. 5.—Whether votes cast in favour of respondent No. 2 were wrongly rejected or refused ?

Banbehari Mohanty, the petitioner of this Election case along with his amendment petition supplied a list of ballot papers which according to him were valid votes for respondent No. 2 Surendra Mohanty, but were wrongly rejected. Surendra Mohanty deposed as P.W. 7 and many ballot papers from the list were put to him and exhibited. The exhibited ballot papers which were rejected and which were originally claimed as valid votes for Surendra Mohanty are listed below:

Constituency
No.

Exhibit No.

104	Ex. P/437 to P/528 Also P/263, P/314, P/282, P/371, P/372, P/373, P/265, P/313, P/87, P/88, P/264, P/315, P/316, P/376, P/375, P/337, P/266, P/368, P/369, P/370, P/272, P/312, P/311, P/261, P/260, P/293	92 26
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The ballot papers of this group, listed in Col. 3 of the revised list of the Annexure of Banbehari Mohanty, were put to P.W. 7 Surendra Mohanty in course of his deposition. 2258 ballot papers of the group were put to him and exhibited. They are listed below :

Constituency No.	Exhibit No.	
104	Ex. P/529 to P/791 (excluding P/677, wrongly included in this list) Also P/120, P/121, P/134, P/136, P/135, P/130, P/127, P/117, P/131, P/39, P/40, P/86, P/122, P/116, P/124, P/128, P/129, P/119, P/114, P/41, P/42, P/43, P/44, P/132, P/133, P/125, P/126, P/123, P/118, P/85, P/37, P/38, P/84, P/45, P/115	262 35 297
105	Ex. P/922 to P/1307 (including P/1054A, and excluding P/1270—P/1274, taken over to the next list) Also P/144, P/49, P/50, P/51, P/52, P/53, P/166, P/152, P/153, P/154, P/155, P/156, P/157, P/90, P/145, P/138, P/139, P/140, P/164, P/165, P/150, P/46, P/149, P/151, P/428, P/158, P/189, P/143, P/92, P/91, P/47, P/48, P/147, P/148, P/146, P/141, P/142, P/159, P/160, P/161, P/162, P/163, R/928, R/927	382 44 426
107	Ex. P/1407 to P/1708 (excluding P/1447, P/1501, wrongly included in this list and P/1475, taken over to the next list) Also P/169, P/179, P/167, P/168, P/186, P/187, P/174, P/170, P/172, P/181, P/182, P/94, P/95, P/171, P/97, P/175, P/177, P/178, P/188, P/99, P/100, P/93, P/173, P/176, P/96, P/185, P/30, P/31, P/32, P/33, P/183, P/184, P/98	299 33 332
108	Ex. P/1776 to P/2201 Also P/201, P/197, P/209, P/113, P/204, P/206, P/192, P/193, P/71, P/67, P/70, P/69, P/68, P/72, P/111, P/112, P/109, P/110, P/210, P/194, P/195, P/101, P/199, P/196, P/102, P/103, P/104, P/105, P/202, P/203, P/211, P/107, P/108, P/109, P/73, P/74, P/75, P/76, P/77, P/78, P/79, P/81, P/82, P/83, P/207, P/208, P/212, P/198, P/205, P/200, P/150, P/191	426 52 478
109	Ex. P/2258 to P/2406 Also P/222, P/435, P/221, P/63, P/217, P/226, P/215, P/216, P/223, P/213, P/227, P/250, P/66, P/219, P/228, P/229, P/218, P/214, P/220, P/65, P/64, P/231, P/232, P/224, P/225	149 25 174
110	Ex. P/2485 to P/2662 Also P/240, P/241, P/242, P/239, P/238, P/59, P/235, P/236, P/243, P/244, P/237, P/234, P/60, P/61, P/62, P/233	178 16 194
112	Ex. P/2767 to P/3097 Also P/259, R/3181, R/3180, R/3477, R/3476, P/54, P/248, P/247, P/257, P/251, P/252, P/250, P/55, P/56, P/235, P/256, P/238, P/427, P/253, P/254, P/426, P/245, P/57, P/248, P/249, P/58	331 26 357
TOTAL		2258

Out of these 2258 ballot papers P.W. 7 in course of his deposition gave up his challenge to 1488 ballot papers admitting that they had been rightly counted for Surendranath Dwivedy. This leaves 770 ballot papers which according to Surendra Mohanty should have been rejected but were taken as valid votes for Dwivedy. These 770 cases are dealt with in Appendix I(b). It will be found that the challenge is accepted in 379 cases but rejected in 391 cases, the latter being found to have been rightly counted in favour of Surendranath Dwivedy. Accordingly it is found that 379 invalid votes cast in favour of respondent No. 1 were wrongly taken into account.

I should add that Banbehari Mohanty, petitioner of this case who deposed as P.W. 13, said that he would like to claim or challenge all the ballot papers exhibited and would not like to give up his claim even to those ballot papers which P.W. 7, Surendra Mohanty himself had not claimed. But Banbehari Mohanty is only nominally an independent petitioner. Practically he filed his election petition containing fresh grounds in the interest of Surendra Mohanty for whom he worked during the election, I have, as a matter of fact, looked through the ballot papers to which the claim was given up by P.W. 7 and in my opinion he rightly gave up his claim to them. There may be a marginal case or two where the claim if made might possibly be allowed, but the same remark applies also to the ballot papers of Ex. 'R' series to which the claim was given up by D.W. 1, Pradipta Kishore Das on behalf of Surendranath Dwivedy. The claim of Banbehari Mohanty, therefore, need not be taken seriously.

Issue No. 12—Whether votes cast in favour of respondent No. 2 have been counted as votes cast in favour of respondent No. 1?

The ballot papers of this group which according to Banbehari Mohanty are valid votes for Surendra Mohanty but were actually counted as valid votes for Surendranath Dwivedy are listed in Col. 4 of his revised annexure. 77 of these ballot papers were put to P.W. 7 in course of his deposition and exhibited. 9 more have been brought to this group from the previous group originally listed in Col. 3 because in course of deposition P.W. 7 claimed that these votes are valid votes for himself and not merely that they are liable to be rejected. All these 86 ballot papers are dealt with in Appendix I(c) and it is not necessary therefore to give a list here. It is found that 74 ballot papers which are valid votes for Surendra Mohanty were wrongly counted as valid votes for Surendranath Dwivedy; 4 are found rightly counted for Surendranath Dwivedy and 6 are found counted for Surendranath Dwivedy but liable to rejection. These 6 are to be added to the 379 found liable to rejection but wrongly counted in favour of Surendranath Dwivedy in the previous issue. 2 more of this list are found to have been wrongly included. Thus I find that 74 votes cast in favour of respondent No. 2 were erroneously counted as votes for respondent No. 1.

Additional Issue No. 1—Whether valid votes cast in favour of respondent No. 1 were wrongly rejected:

The respondent, Surendranath Dwivedy gave in Col. 2 of his annexure the list of ballot papers which were rejected but which according to him were valid votes for himself. Many of these ballot papers were put to P.W. 7 when he was in the witness box in course of his cross-examination. On behalf of the respondent the claim to the exhibited ballot papers of this list was set out by D.W. 1, P. K. Das in course of his examination-in-chief. The exhibited ballot papers of this list are as follows:

Constituency No.	Exhibit No.	
104	R/252 to R/389	138
105	R/390 to R/573 excluding R/471, R/562, (wrongly included in this list)	182
107	R/929 to R/1077	149
108	R/1636 to R/1757 Also P/416, P/474, P/273, P/274, P/304, P/305	128
109	R/2242 to R/2332	91
110	R/2488 to R/2585	98
112	R/2929 to R/3122	194
107	R/3591	1
TOTAL		981

It will be seen that there are 981 exhibited ballot papers of this list. D.W. 1 in course of his deposition gave up his claim to 227 ballot papers of this list but claimed the remaining 754 as valid votes for Surendranath Dwivedy. These 754 ballot papers are dealt with in Appendix II(a). The claim is accepted in 394 cases and rejected in 360 cases. Accordingly I find that 394 valid votes in favour of respondent No. 1 were wrongly rejected.

Additional Issue No. 2.—Whether invalid votes cast in favour of respondent No. 2 were wrongly taken into account?

In Col. 3 of his Annexure the respondent, Surendranath Dwivedy listed the ballot papers which according to him were counted for Surendra Mohanty but are liable to be rejected. These were also put to P.W. 7 in course of his cross-examination and exhibited and the case of the respondent was set out by D.W. 1 when he was examined. The exhibited ballot papers of this group are as follows:

Constituency No.	Exhibit Nos.	
104	R/7 to R/251	245
105	R/574 to R/845, R/871, R/875	274
107	R/1078 to R/1624	
	excluding R/1207, R/1394, R/1395, R/1397, (included in the next group), R/1517, R/1565 (from rejected bundle wrongly included)	541
108	R/1758 to R/2229	
	excluding R/2067, R/2165, R/2166 (included in the next group)	469
109	R/2333 to R/2477	145
110	R/2586 to R/2920	
	excluding R/2708 (included in the next group)	334
112	R/3123 to R/3467, R/3472	
	excluding R/3180, R/3181 (illustrative only)	344
105	R/3498 to R/3590	93
107	R/3592 to R/3727	136
108	R/3728 to R/3844	117
		2698

Thus it will appear that 2698 ballot papers of this list were exhibited. Out of these D.W. 1 in course of his examination gave up his challenge to 1645 ballot papers but claimed that the remaining 1053 ballot papers counted for Surendra Mohanty are liable to rejection. These 1053 ballot papers are dealt with in Appendix II(b). The challenge is accepted as valid in 452 cases but rejected in 601 cases. It is therefore found that 452 invalid votes cast in favour of respondent No. 2 were wrongly taken into account.

Additional Issue No. 3.—Whether votes cast in favour of respondent No. 1 were counted as votes for respondent No. 2?

The respondent, Surendranath Dwivedy in Col. 4 of his annexure gave a list of votes which according to him were valid votes for himself but were wrongly counted for Surendra Mohanty. These were also put to P.W. 7 in course of his cross-examination and the claim of the respondent was set out by D.W. 1 when he was examined. There are 147 ballot papers of this group and 8 more have been added by taking them from the previous list i.e. from the list of ballot papers mentioned in Col. 3, because in the course of his deposition D.W. 1 claimed that these ballot papers were actually valid votes for Dwivedy and not merely that they were liable to rejection.

Out of these 155 ballot papers there is no dispute about 49 appertaining to polling station No. 70 of Assembly Constituency No. 105 Salepur. When the ballot papers of this constituency were inspected before the District Magistrate, Banbehari Mohanty filed an objection petition stating that many Congress votes were missing from the bundle. Accordingly when Surendra Mohanty was being examined in Court, Mr. D. N. Roy counted all the ballot papers of polling station No. 70 of Salepur Constituency and checked them against the result sheet in Form 20. It was found that in one sub-bundle containing 50 ballot papers kept with the Congress votes 49 were valid votes for Surendranath Dwivedy but the

top ballot paper marked R/875 was a valid vote for the Congress candidate, Mohanty. The 49 ballot papers which are valid votes for Dwivedy are marked as R/876 to R/924. The total number of ballot papers found in the bundle was found to tally with the total number mentioned in the result sheet, but the number of votes obtained by each candidate was different, by the No. mis-bundled and mis-counted. Accordingly, it was clear that 49 votes for Surendranath Dwivedy had been mis-bundled and mis-counted and not that any ballot paper which was a valid vote for the Congress candidate was missing from the bundle. This position being accepted by both parties after the check of all the ballot papers of the polling station. These 49 have not been discussed by me in Appendix II(c) where the remaining 106 ballot papers are dealt with. Out of these 106 ballot papers 76 are found valid votes for Surendranath Dwivedy but wrongly counted for Surendra Mohanty. 23 are found to have been already counted for Surendranath Dwivedy but mis-placed in the bundle so as to give initially a wrong impression which had to be corrected by counting and checking all the ballot papers of the relevant polling station 4 are found rightly counted for Surendra Mohanty and 3 are found liable to rejection. These 3 are to be added to the 452 cases in the last Issue where the challenge to votes counted for Surendra Mohanty as liable to rejection has been accepted. Thus altogether, 125 valid votes for Dwivedy were wrongly counted for Mohanty.

Issues as to corrupt practices arising out of Recrimination.—

Issue No. 29.—Whether respondent No. 2 or his agents or any other person with his consent committed the various acts of bribery alleged in paras 8(c) to 8(v) of the Recrimination?

No evidence has been adduced regarding the corrupt practices mentioned in sub-paragraphs (c), (i), (l), (p), (q), (r) and (s) of paragraph 8.

Sub-para (d).—In Sub-para (d) the respondent made the allegation that Surendra Mohanty told the electors of Nemra that the State Ministry was in his hands and that he would secure recognition from the Government for the local Binapani School which was not getting recognition for some time, provided the local people would support him at the election, and that on the local people promising to support him if he could secure recognition for the School, Surendra Mohanty obtained recognition which was obtained on 20th February 1962 i.e. only a day or two before polling in that area. On this point the respondent examined 4 witnesses, namely, D.W. 33, 34, 42 and 45. D.W. 33 Ballav Chandra Jena belongs to Thauri which adjoins Nemra village. He said that 12 or 13 days before the date of polling in the last Parliamentary election Surendra Mohanty came to Nemra and held a meeting near Binapani M. E. School, that the witness attended the meeting; that Surendra Babu said that he was prepared to do something to meet the needs and necessities of the village people; that some villagers said that the School was not getting recognition as a High School, and Surendra Babu said that he would do his best to obtain recognition for the School as a High School, and the people present said that if he would do that then they would certainly vote for him. The witness also said that a few days later, Lokanath Misra and Prahlad Malik came to Nemra and held a meeting and told the people that Surendra Mohanty was carrying out his promise to obtain recognition for the School as a High School and that the local people should vote for him. The witness also said that a few days thereafter he saw a procession being held by the students and teachers of Binapani School and he learnt that the recognition of the School as a High School had been obtained and this was a day or two before the polling.

The evidence of D.W. 34, Narahari Naik is that he did not attend any meeting addressed by Surendra Mohanty but he attended the meeting which was held by Lokanath Misra and Prahlad Malik and that Lokanath Misra stated that Surendra Babu was working to carry out his promise and that the people should therefore vote for him. This witness also said that on the day previous to the date of polling he saw the School boys and teachers of Binapani School going out in a procession and he learnt that the School had obtained recognition. He said in cross-examination that for 3 or 4 years before that, the Secretary and other people interested had been going up to Cuttack for obtaining recognition for the School but they had not been successful.

D.W. 42, Pitambar Behera and D.W. 45, Prahalad Dutta are assistants attached respectively to the office of the Inspector of Schools, Cuttack and D.P.I. Cuttack. Their evidence merely shows that provisional recognition for Binapani M. E. School as a High School was ordered on 16th February 1962 and a Memo containing that order dated 20th February was communicated to the School.

Secretary. Their evidence does not show either that Surendra Mohanty took any step in the matter or that as suggested by the respondent, the then Chief Minister, Bijoyananda Patnaik gave any directive for granting speedy recognition to the School as a High School. On the other hand, the evidence of D.W. 45 shows that in August, 1961, long before the Parliamentary election at Kendrapara, the Secretary of the School addressed petitions to the D.P.I. and to the Education Minister of Orissa, and that the Education Minister then asked for a report and thereafter in due course a provisional recognition was granted to the first High School class, namely, Class VIII. Both these witnesses said that they were not aware of any directive by the then Chief Minister in that connection. They also did not mention that Surendra Mohanty did anything. D.W. 33 and D.W. 34 are not connected with the Managing Committee of the School and neither do they belong to Nemra village. They appear to be chance witnesses and in the circumstances it is not possible to accept their evidence about a meeting held near the Binapani School compound by Surendra Mohanty, or of the local people having promised to vote for him if Surendra Mohanty succeeded in obtaining recognition. The more fact that the recognition was obtained at that time is not sufficient, for the evidence of the Assistants of the Inspectorate and the Directorate of Public Instruction shows that the recognition was granted in due course of business. The petitioner examined one witness, namely, P.W. 23, Maheshwar Rout, who is a member of the Managing Committee of Binapani High School, and he said that Surendra Mohanty never held any meeting near the School compound at Nemra 12 or 15 days before the polling or on any other day and that neither did he promise anything about obtaining recognition of the School, and that recognition was obtained in due course of business. Accordingly the allegation must be found to be not proved.

*Sub-paragraph (e).—*In sub-paragraph (e) of paragraph 8, the respondent alleged that Surendra Mohanty had promised to obtain departmental recognition for Rajgarh M. E. School in case they would help him in the election and that recognition of Rajgarh M. E. School was also obtained on 20th February 1962, a day before the polling. The only evidence adduced in this connection by the respondent is a statement by D.W. 33, Ballav Chandra Jena that on the day before the polling he also saw a procession by the students and teachers of Rajgarh M. E. School celebrating their obtaining recognition for the M. E. School, P.W. 23, Maheshwar Rout, said that he was himself the Secretary of the Rajgarh M. E. School and that it is not a fact that Surendra Mohanty did anything in connection with the obtaining of recognition for the School. He also denied that any celebration was held when the recognition of the School was obtained. He stated that he himself went to Cuttack and obtained the recognition order for Rajgarh M. E. School as the Secretary of the School. Thus, it must be held that this allegation has not been proved.

*Sub-paragraph (f).—*In this sub-paragraph respondent alleged that on 8th February 1962 at a meeting held at Adhanga Malikeswarpur, Surendra Mohanty and Purusottam Naik asked the local people to vote for Surendra Mohanty, and Surendra Mohanty made a donation of Rs. 100/- to the village library, to induce the people to vote for him and that Surendra Mohanty further stated that he was ready to supply a petromax light, a canvass ground sheet (Satranji) and a radio set for the library if the people would vote solidly for him. Two witnesses were examined by the respondent to prove this allegation, namely, D.W. 26 and 27.

On behalf of the petitioner has been urged that the particulars in sub-paragraph (f) are not sufficient because it is not mentioned there to whom the money is supposed to have been paid. The details should certainly have been mentioned in sub-paragraph (f). D.W. 26, Khetrabasi Rout of Adhanga Malikeswarpur said that about 15 days before the polling, Surendra Mohanty and Purusottam Naik came to the village by jeep along with Raghunath Swain of the village, and that at a meeting which was attended by 200 people Surendra Mohanty said that he would like to help the villagers and meet their wants, and Purusottam Naik then said that money would be given for the improvement of the village library if people would vote for Surendra Mohanty, and then Surendra Mohanty asked Purusottam Naik to pay money for the library and Purusottam Naik then handed over Rs. 100/- to Raghunath Swain for the improvement of the village library. D.W. 27, Golakmani Samal, also belonging to the same village, described the meeting as having taken place 7 or 8 days before the polling. He mentioned about the promise by Purusottam Naik to give a petromax light, a radio and a canvass ground sheet, which were not mentioned by D.W. 26. Neither D.W. 26 nor D.W. 27 have any connection with the library. D.W. 26 admitted that he had never been to the library. D.W. 27 admitted that he did not know who was the Secretary

of the Library and who is the present Secretary. D.W. 26 stated that Purusottam Naik himself suggested that money should be given to the library and that none of the villagers assembled at the meeting suggested this. But D.W. 27 said that some young men led by Raghunath Swain aged 28 suggested that help should be given to the village library. The evidence of the two witnesses thus contain important discrepancies. The petitioner examined Raghunath Swain himself as P.W. 17. He said that he was the President of the Library of the village and that one Nrusingha Charan Rout was the Secretary. He denied that Surendra Mohanty held any meeting in the library or in the village and that any payment was made for the library by Surendra Mohanty or by Purusottam Naik. He further stated that D.W. 27, Golak Chandra Samal had worked as a Polling Agent for Surendranath Dwivedy, the P.S.P. candidate, at the time of general election. Golakmani Samal had himself made some peculiar statements in the course of his deposition, saying that when money was being offered by Purusottam Naik, he asked Raghunath Swain not to take the money as it was illegal. This evidence can hardly be believed, and P.W. 17, Raghunath Swain denied that there was any occasion for Golakmani Samal to ask him not to take the money for the library. It was suggested to Raghunath Swain that he had in fact received Rs. 100/- from Purusottam Naik for the village library and that he had misappropriated most of that money and not utilised it for the library and therefore the young men of the village had started a rival library. This suggestion was denied by the witness, and it is a new case because no such suggestion was made either by D.W. 26 or by D.W. 27.

The petitioner examined two other witnesses in this connection, namely, P.W. 32, Bikal Charan Naik and P.W. 33, Haribandhu Bhadra, both belonging to the same village. They also denied that any meeting was held in the library or in the village by Surendra Mohanty and Purusottam Naik or that any money was paid by them for the library.

Mr. Misra on behalf of the respondent has urged in connection with this allegation and indeed in connection with all the other allegations, that an adverse inference ought to be made against the petitioner because neither the petitioner Surendra Mohanty nor Purusottam Naik deposed in the case to deny the allegations made in the recrimination, though both of them had deposed in connection with the main case. It is true that if Surendra Mohanty and Purusottam Naik had deposed in connection with the recrimination and denied the allegations it would have been better; but the allegations of corrupt practice have to be proved beyond reasonable doubt like a charge in a criminal case, and the persons against whom the allegations are made, are in the position of an accused and the accused may avail of his right not to speak and leave it to the prosecution to establish the charge against him. The Court has to see whether the charge has been proved beyond reasonable doubt and it must be said that the charge of paying Rs. 100/- as gratification to Adhanga Malikeswarpur Library is not proved.

*Sub-paragraph (g).—*In this sub-paragraph it is alleged that on 19th February 1962 at Garadpur a meeting was held by Bijoyananda Patnaik and Surendra Mohanty, and both of them promised that they would look to the grievances of the people of the locality if they voted for Surendra Mohanty, and then Bijoyananda Patnaik gave Rs. 300/- to one Parbati Devi and asked her to induce the women of the locality to vote for Surendra Mohanty; and that he also paid a sum of Rs. 100/- to Arjun Tihadi and asked him to induce the villagers to vote for Surendra Mohanty.

In connection with this allegation we have the evidence of D.W. 3, 32 and 40 and against them the evidence of P.Ws. 34 and 35. D.W. 3, Bhagabat Prasad Mohanty who is a practising lawyer of Kendrapara was canvassing for Surendranath Dwivedy at the time of election, and he also held a meeting at Garadpur on 19th February 1962. He said that a meeting was held by Bijoyananda Patnaik, the Chief Minister and Surendra Mohanty near the Hat or the market place of Garadpur, where a platform had been arranged for the meeting. He himself did not attend the meeting, but he said that after the meeting he heard that Biju Babu had paid Rs. 300/- to Parbati Devi and Rs. 100/- to Arjun Tihadi, but he could not say from whom he got this information. This evidence therefore is not substantive evidence. D.W. 32, Narendranath Naik of Kalabuda said that he attended the meeting in connection with the election which was held in the compound of Garadpur B. P. School which is near the market place and that Biju Babu did not come at the time fixed although people were waiting at the place of meeting where a platform had been erected, and so the witness went to the nearby mango grove where he found another meeting going on and he heard

Bhagabat Prasad Mohanty speaking in favour of the hut i.e. the P.S.P. candidate, that Biju Babu ultimately arrived at about 7 or 7-30 P.M. and that he addressed the meeting, saying that the area was a flood affected area and he would take necessary steps for relief and improvement, and he asked the people to vote for Surendra Mohanty and that Surendra Mohanty also addressed the meeting in the same strain; that after the meeting was over two Congress workers brought a woman before Biju Babu and said that at the time of air-dropping of rice after the floods of 1961 one bag of rice fell on her and the woman was a widow, and that Biju Babu asked her whether she could collect the women voters and take them to vote for the Congress candidate and Parbati Devi said that she could do that work and then Biju Babu paid her Rs. 300/- in hundred rupee notes. The witness added that another person who was a Brahmin was brought before Biju Babu and Biju Babu paid him Rs. 100/- asking him to call people to the polling station and induce them to vote for the Congress candidate. The witness could not give the name of the Brahmin to whom Rs. 100/- is supposed to have been paid. D.W. 40, Kanduri Charan Tripathi said that he also attended the meeting at Garadpur which was addressed by the Chief Minister, Bijoyananda Patnaik and by Lokanath Misra and by Surendra Mohanty, and that after the meeting a woman named Parbati Devi was produced before the Chief Minister by two men, namely, Arjuni Tripathi and Krushna Das, and that Biju Babu gave the woman Rs. 300/- for inducing the voters to vote for the Congress. This witness did not say that money was paid to any other person, although he stated in cross-examination that he was there until Biju Babu left the place in his jeep.

P.W. 34, Braja Sundar Satpathy said that a meeting was held at Garadpur canvassing for the Congress candidate and that Bijoyananda Patnaik and Lokanath Misra spoke at the meeting but he denied that any money was paid to any body at the meeting. He said that after the meeting was over a woman named Parbati Devi, who had been crippled as a result of air-dropping of a bag of rice on her was produced, and people said that she was disabled and that something should be done for her, and that Biju Babu said that she should be taken to Cuttack General Hospital and he would see that proper treatment was given to her but he did not give her any money. The evidence of P.W. 35, Panchanan Naik is similar. The witnesses denied that any Arjun Tripathi or Tihadi was produced before Bijoyananda Babu after the meeting.

Considering the entire evidence it appears to me likely that when the crippled woman was brought before the Chief Minister, he may have paid her some money as an *ex-gratia* payment in view of her crippled condition, because 7 or 8 months after she had met with her accident there was hardly any point in taking her to the hospital. But it is not likely that a crippled woman should be given the task of collecting the women voters and inducing them to vote for the Congress candidate. It was an *ex-gratia* payment which may have been made to impress the people assembled with the generosity of the Congress Government, but this does not amount to bribery. It must be held therefore that the allegation has not been proved.

Two other allegations are concerned with Bijoyananda Patnaik and it would be convenient to take them up at this stage. In sub-paragraphs (m) and (n) it was alleged that Surendranath Panda, who was working as an Agent for Surendra Mohanty, along with Surendra Mohanty and Bijoyananda Patnaik held a meeting at Kulagaon Isalo on 19th February 1962 and Surendranath Panda told the people at the meeting that if people would vote for Surendra Mohanty he would ask the Chief Minister to start relief work in the area and that the leading people present would be put in charge of the relief work, and some of the people present like Gajendra Rout, Madhusudan Bal and others then and there fell victims to the inducement; and that Surendra Mohanty and Bijoyananda Patnaik also promised that if the villagers would vote for the Congress candidate recognition would be given to Class VI started at Harachandi Bidyapitha.

In connection with these allegations the respondent examined 3 witnesses, namely, D.Ws. 15, 16 and 17 and against them the petitioner examined 4 witnesses, namely, P.Ws. 20, 21, 22 and 24. D.W. 16, Karuni Rout gave his evidence in a straight forward manner and appeared to be speaking the truth. He stated that Surendranath Panda was then the Sarpanch of Asureswar Gram Panchayat within which Kulagaon Isalo and Harachandi Bidyapitha are situated; that a meeting was held at Kulagaon Isalo two or three days before the date of polling for the Parliamentary election; the meeting having been previously announced by Surendranath Panda, and that Bijoyananda Babu came to the meeting along with Surendra Mohanty and Surendranath Panda; and that at the meeting Bijoyananda Patnaik said that the area was a flood stricken area and he told the people to

vote for the Congress and promised that he would meet the grievances of the people regarding flood relief etc.; he also asked them to submit application for relief work and that some people of Tihada and Barimul and other places submitted applications, and that an application was also submitted at that meeting for recognition of Harachandi Bidyapitha, and that the Chief Minister said that he would see that recognition was granted to the School and he told the other applicants that their prayer would be met. The witness said that Harachandi Bidyapitha got recognition as a M. E. School about a year after the date of polling and not at the time. The promise by the Chief Minister to do relief work in a flood stricken area may no doubt act as an inducement for the people to vote for the Congress but it cannot be said that it amounts to illegal gratification. This is an advantage that a candidate belonging to the party in power naturally gets and although the other party may resent it, it cannot be classed as an instance of corrupt practice. It is to be observed that according to this witness, Karuni Rout, the offer to the people to take charge of the flood relief work was not made conditional on their promising to vote for the Congress candidate, but generally, to meet the needs of a flood-stricken area, relief work was promised, and at the same time, people were asked to vote for the Congress. That was a perfectly proper address and not illegal gratification. D.W. 15, Ratnakar Misra also spoke of the meeting at Kulagaon Isalo, and he also spoke generally in the same strain as D.W. 16, Karuni Rout. D.W. 17, Damodar Rout went a little further, saying that in the addresses it was stated that the grievances of the people would be met by the Chief Minister if they voted for the Congress candidate, but in the evidence of P.W. 15 and P.W. 16 there was no such conditional offer mentioned and it must be held that this was an embellishment made by D.W. 17 to support the case of the respondent.

Surendranath Panda, who is supposed to have arranged the meeting, deposed for the petitioner as P.W. 24. He denied that any such meeting had been convened by him or held near his house at Kulagaon Isalo. But though the witness is a man of some position, it is difficult to accept his testimony as true. The respondent proved a judgment Ex. KK in which the evidence of Surendranath Panda in a criminal case had been disbelieved. P.W. 24 also admitted that a Government order has been passed against him removing him from Sarpanchship on allegations of failure to account for the funds in his charge. In the circumstances the evidence of P.W. 24 must be discarded.

P.W. 20, Gajendra Rout belongs to Tihada which is about 2 miles or a little more from Kulagaon Isalo, and he said that he did not attend any meeting and did not know of any meeting held by Bijoyananda Patnaik and Surendra Mohanty at Kulagaon Isalo, and that he did not apply in such a meeting for being appointed as a man-in-charge of relief work. He admitted in cross-examination that some Test Relief Work had been done in his village and that another road from Janrabarimul to Tihada with culverts was made as Flood Relief Work. He, however, claimed that the work was started about a month after the date of polling and not immediately after the alleged meeting held at Kulagaon Isalo by the Chief Minister. P.W. 21, Madhusudan Bal, also stated that he did not know of any meeting held by Surendra Mohanty and Chief Minister at Kulagaon Isalo near the house of Surendra Panda and he did not apply for being appointed as a man-in-charge of the relief work at any such meeting. In cross-examination he also admitted the construction of the road from Janrabarimul to Tihada as a Flood relief work, but said that the construction of the road was started from the month of Kartik, long before the alleged meeting held at Kulagaon Isalo by the Chief Minister. He said that 4 roads had been constructed in his locality, and that the construction of all the roads was started about the same time and that there was no man-in-charge for any of the 4 road construction works. P.W. 22, Kalandi Charan Bal also gave similar evidence.

After considering the entire evidence on the point I hold that a meeting was actually held by the Chief Minister and Surendra Mohanty at Kulagaon Isalo, but as I remarked in connection with the evidence of D.W. 16, Haruni Rout, there was nothing done or said which amounts to corrupt practice and therefore the allegation that corrupt practice was done by Surendra Mohanty in collusion with the Chief Minister must fail.

Sub-paragraph (O).—The allegation in this sub-paragraph is that on 19th February, 1962 Bijoyananda Patnaik along with Surendra Mohanty went to Gadijanga alias Rameswarpur, and that at a meeting held there Surendra Mohanty said that the Chief Minister was on his side and if the people would vote for him he would see that the Hostel for the School was constructed, and that the Chief Minister in his speech supported Surendra Mohanty.

On this point there is evidence of two witnesses for the respondent, D.W. 9, Purusottam Das and D.W. 10, Maheshwar Mohanty. D.W. 9, stated that polling was held in his locality on 21st February, 1962, and two days before that in the compound of the M.E. School of Gadijang Surendra Mohanty and Bijoyananda Patnaik held a meeting which the witness attended, and at the meeting Surendra Mohanty said that if the local people would vote for him their difficulties would be removed, and that in reply to the suggestions made by the local people he said that the local school would get funds for the construction of its boarding house if he would get the local votes, and that the Chief Minister also spoke at the meeting saying that the people should vote for the Congress candidate and he would provide necessary funds for the school i.e., for the construction of the hostel. This witness stated that a hostel or a boarding house had been made after the election even though the Congress candidate had been defeated at the election. In the circumstances, the offer to erect a hostel for the school could not have been conditional on the local people voting for the Congress candidate, even if such a meeting was held and addressed by the Chief Minister. D.W. 10, Maheshwar Mohanty gave evidence similar to D.W. 9. Against the evidence of these witnesses, the petitioner examined P.W. 25, Janaki Prasad Das, who is the Sarpanch of the Gram Panchayat within which Gadijang is situated. He is also the Secretary of the School there. He denied that any meeting was held by the Chief Minister along with Surendra Mohanty in or near the School house on 19th February, 1962, and that he was in the village on that date and he would have known if such a meeting was held. The witness admitted that a hostel was under construction for the School, but he said that money for the construction of the hostel had been granted by the Block Development Office of the area. He further admitted that in cross-examination that the construction of the hostel began in February, 1962. It was admitted by both D.W. 9 and D.W. 10 that the School at Gadijang had not got recognition in February, 1962. P.W. 25 said that the School got recognition only towards the end of 1962 or beginning of 1963. It does not appear to be likely that the Chief Minister would hold a meeting at a small unrecognized school, even though on 19th February, 1962, he was going about in the constituency canvassing for the Congress candidate. The respondent apparently got his cue from the fact that the School hostel building was started in or about February, 1962. In view of the circumstances I do not accept the evidence of D.Ws. 9 and 10 about a meeting held in Gadijang School building. The allegation is therefore not proved.

Sub-paragraph (h).—In this sub-paragraph the respondent alleged that Purusottam Naik told villagers of Anuapada that Surendra Mohanty would arrange a ferry boat at the village ghat in case the people of the locality would vote for him and that the people welcomed the offer and a ferry boat was actually supplied to Anuapada ferry ghat on 21st February, 1962. The two witnesses in connection with this allegation are D.W. 24, Nilaman Bhadra and D.W. 25, Sadhu Charan Das. D.W. 24 who belongs to Anuapada stated that the village is situated near the embankment of a canal, namely Gobri canal or Kendrapara canal, and that there was no ferry service over the canal and that 15 days before the polling Purusottam Naik, Chairman of the Panchayat Samiti came to the village and said that he would give a ferry boat if the people would vote for the Congress candidate and that he met the local people at the house of the Ward Member, Ajambar Bhadra; that about 8 days before the polling Purusottam Naik came again and said that a ferry boat would be given if the people would vote for the Congress candidate, and that Ajambar Bhadra and others present promised to vote for the Congress candidate; and that two days before the polling Purusottam Naik brought a ferry boat which was punted along by one Nandi Jena to the village ferry ghat, and that on the date of polling Purusottam Naik and his wife came and Purusottam Naik asked Nandi Jena to put the boat across the canal as many times as necessary so that the people might come to Sorisia booth to cast their votes and that he was promised Rs. 15/- as his wages. D.W. 25, Sadhu Charan Das only saw Purusottam Naik 8 days before the polling at the house of Upendra Bhadra, and he heard Purusottam Naik promising a ferry boat if the people would vote for the Congress candidate, and that when many of the people present at the meeting promised he said that a ferry boat would be given, and that on the date of polling he saw Nandi Jena putting the boat across the canal, and Purusottam Naik and his wife came in the morning and that Purusottam Naik told Nandi Jena that his wife would be there and she would give him Rs. 15/- at the end of the day, and that Purusottam Naik's wife, who is a nominated woman member of the Panchayat Samiti, collected the women voters and saw that they were carried across the canal in the boat punted by Nandi Jena.

None of these witnesses stated that Surendra Mohanty had any direct connection with the supply of the ferry boat. Purusottam Naik was the Chairman of the Panchayat Samiti having jurisdiction in that local area and if he took an interest

in establishing a ferry service over the canal before the polling that would benefit the voters both of the Congress and the P.S.P. parties. Moreover it would appear from the admission of D.W. 25 that the ferry boat was supplied by the Block Development Office, because D.W. 25 stated that the Block had not done any other work in the locality excepting the establishment of the ferry. Further, it appears from the evidence of these two witnesses that Anuapada and Sorisia are on the same side of the canal and the boat was not needed for Anuapada at all. According to these witnesses it was the voters of Naraharipur, Biluagari and Kulasahi on the other side of the canal who wanted the ferry boat for going to Sorisia booth and that the people were not taken by the ferry boat to Anuapada. The petitioner examined one witness, namely, P.W. 18 Upendra Bhadra in this connection. He is the Sarpanch of the local Panchayat. He said that Purusottam Naik never went to the house of Ajambar Bhadra to meet the local people there, and that Purusottam Naik never brought the ferry boat to the village two days before the polling or on any other day. He said that the people of Anuapada did not at all need a ferry boat, a fact which was admitted by D.W. 24 and D.W. 25, but that people who had to go to Sorisia booth needed a ferry and that a ferry boat had been supplied by Government long before to Sorisia Ghat. The witness also said that he knew Nandi Jena but that Nandi Jena was a Kothia or an agricultural servant employed by Pitambar Das, and Nandi Jena never plied a boat on the polling date, and the witness who was present in the village throughout the day never saw Purusottam Naik's wife doing any work e.g. collecting women voters. This witness made a statement in cross-examination which explains what really happened. He said that Anuapada village does not go upto the Kendrapara canal, but a portion of Haripura village intervenes between Anuapada and the canal, and that a boat was plying for about one year at Haripur Ghat between Haripur and Naraharipur. The boat was tied up at a distance of about 300 cubits from the rice mill of Gagan Behari Bhadra which is the place at which D.W. 24, Nilamani Bhadra usually stays and it appears that Nilamani Bhadra was really referring to this boat. P.W. 18 stated that the boat had been supplied not by Purusottam Naik but by the S.D.O., P.W.D., Kendrapara, and not Nandi Jena but one Nisharan Jena was in charge of the boat. I find, therefore, that a boat was supplied but for Haripur Ghat and not Anuapada ghat and that there is nothing to show that Surendra Mohanty had anything to do with the supply of the boat. The allegation therefore is not true.

Sub-paragraph (j).—In this sub-paragraph the respondent alleged that on 22nd February 1962 Surendra Mohanty and Purusottam Naik paid Rs. 200/- for the M. E. School at Kansar in order to induce the local people to vote for him. On this point there is evidence of D.W. 29, Ekadashi Rout and D.W. 30, Jagar Behera. Their evidence is however somewhat discrepant. Both of them claimed to be members of the School Committee but while D.W. 29 Ekadashi Rout said that the sum of Rs. 200/- received from Purusottam Naik was entered in the School Account Book as a subscription received, D.W. 30, Jagar Behera said that the sum was not entered in the School Account Book nor was there any discussion at the meeting of the School Committee how the money should be spent. As against the evidence of these two witnesses the petitioner examined P.W. 14, Govind Chandra Rout and P.W. 15, Bhabagrahi Panda. P.W. 14, Govind Chandra Rout is the Sarpanch of the Gram Panchayat of Ostapur within which Kanaar is situated, and he is moreover the Secretary of the School Committee. He denied that any meeting was held in the School house and that any such amount was entered in the School Account Book. He offered to produce the School Account Book for the inspection of the Tribunal, and actually did so after two or three days, and he showed from the School account book that no such subscription had been entered in the account of the school in February 1962 or on any subsequent month. It was no doubt suggested to this witness that some of the pages of the account book had been changed and false accounts made up in order to conceal the fact that such a subscription had been received from Surendra Mohanty. But that suggestion was not proved. P.W. 15, Bhabagrahi Panda is the Vice-Chairman of the Panchayat Samiti, Kendrapara I, and is also a member of the Kansar School Committee. He fully supports the evidence of P.W. 14, Govind Chandra Rout. P.Ws. 14 and 15 appear to be more reliable than the witnesses examined by the respondent in this connection, and it must therefore be held that the allegation of a contribution of Rs. 200/- being paid by Surendra Mohanty to induce the people of Kansar to vote for him has not been established.

Sub-paragraph (k).—The allegation in this sub-paragraph is that on 22nd February 1962 Surendra Mohanty and Purusottam Naik paid Rs. 50/- to Balragi Charan Jena for Farod Library to induce the people of Farod to vote for him. On this point there is the evidence of D.W. 29, Ekadashi Rout, who has already been mentioned in connection with the last allegation, and D.W. 28, Balragi

Charan Jena. D.W. 29 stated that after the meeting at Kansar School building, Surendra Mohanty, Purusottam Naik and others went on foot to Farod, and there in the library another meeting was held where Purusottam Naik or Surendra Mohanty made over the sum of Rs. 50/- to Bairagi Charan Jena for the village library. The evidence of D.W. 28, Bairagi Charan Jena is very peculiar. He said that he received the money, but at first he refused to take it knowing that it was wrong to accept money offered for inducing people to vote for a particular person. Moreover, he admitted that he was not a member of the Library and stated at first that the Secretary of the Library, Nagamani Jena was present at the meeting. In course of his deposition, however, he altered that statement, probably to make it plausible that the money should be paid to him and not to Nagamani Jena and said that Nagamani Jena was not actually present at the meeting. He explained the offer to him by saying that he was a Mamlatkar and therefore a man of some importance in his village. But he had to admit that he is an employee of Hari Charan Babu and stays in Hari Charan Babu's house at Kendrapara town and only occasionally he comes to his village home. He admitted that the Sarpanch and other people were present in the meeting, and it is difficult to understand why the money was paid to him who was neither a member of the Library Committee nor a usual resident of the village. It seems to me that he was named in the recrimination because the respondent could be certain of producing him as a witness. P.Ws. 14 and 15 whose evidence has been already referred to before, stated that there was no meeting at Farod Library at all by Surendra Mohanty and Purusottam Naik and no money was given to Bairagi Charan Jena. This allegation is also not proved.

Sub-paragraph (t): In the recrimination petition it was stated that on 13th February 1962 Surendra Mohanty along with Biren Mitra, the then Deputy Chief Minister, with some other people went to Bareilpur and met some people at a Library known as Bidei Babaji Pathagar, and there in order to induce the people to vote for the Congress candidate Biren Mitra told Anadi Charan Swain to go to his residence at Cuttack and promised that he would then pay him Rs. 50/- for the improvement of the library.

In connection with this allegation, the respondent examined 3 witnesses, namely, D.W. 11, Sridhar Mohanty, D.W. 35, Hrudananda Panda and D.W. 36, Upendra-nath Samal; but Anadi Charan Swain to whom the money is supposed to have been offered was not examined. There are important discrepancies in the evidence of these witnesses. According to D.W. 35, Surendra Mohanty addressed the meeting asking the people to vote for him and promised to do improvement to the village library, and Biren Mitra also addressed the meeting and told Anadi Charan Swain to go to Cuttack 4 or 5 days later when he would pay Rs. 50/- for the library and that Anadi Charan Swain thereafter went to Cuttack 4 or 5 days later, and the witness saw books worth Rs. 40/- or Rs. 50/- purchased for the library. D.W. 36, however, stated that it was Surendra Mohanty who asked Anadi Charan Swain to go to Cuttack 4 or 5 days later and get Rs. 50/- for the library; and it would appear from the evidence of this witness that money was promised and paid by Surendra Mohanty and not Biren Mitra. D.W. 11 said that Surendra Mohanty said that money would be paid for the library if the people would vote for the Congress, and Biren Mitra also said the same thing. No body deposed of having actually seen the payment of the money. In view of the discrepancies it is not possible to accept the evidence as to the payment of money for Bidei Babaji Pathagar. Further, there is the evidence of P.W. 29, Dasarathi Rout examined for the petitioner, who stated that no such meeting was ever held at Bidei Babaji Pathagar. I therefore hold that the allegation has not been proved.

Sub-paragraph (u): In the recrimination it was stated that on the same date i.e. on 13th February 1962 the Deputy Chief Minister also went to Osang L. P. School with Surendra Mohanty and that Biren Mitra promised to pay Rs. 400/- for the construction of the pucca walls for the school building if the people present promised to vote for the Congress candidate and then and there a part payment of Rs. 200/- was made by Biren Mitra. D.W. 21, Rakhal Prasad Mohanty gave evidence on this point. He said that Biren Babu said that he was prepared to help the School to construct its house if people promised to vote for the Congress candidate and that he actually gave Rs. 200/- to Chintamani Sahu, the local Sarpanch and that Chintamani Sahu handed over the money to the witness Rakhal Prasad Mohanty and Rakhal Prasad Mohanty after some days handed over the money to Padma Charan Mohanty, Chairman of the school Committee. The evidence of D.W. 21 as to Biren Mitra thus addressing a meeting and paying money is not corroborated. Padma Charan Mohanty who deposed as D.W. 22,

merely stated that he received a sum of Rs. 200/- from D.W. 21, Rakhal Prasad Mohanty and he himself was not present at any meeting held by Biren Mitra and Surendra Mohanty. P.W. 28, Jairam Mohanty denied that any such meeting was held. It does not appear to me to be likely that the Deputy Chief Minister would be going about paying money to small village libraries and schools while canvassing for the Congress candidate. As one of the heads of the Congress organisation he might be canvassing for the Congress candidate but it cannot be believed that he would be thus paying money to small local organisations at public meetings. The evidence in any case is not satisfactory, and the allegation must be disbelieved.

Sub-paragraph (v): The allegation in the recrimination is that on the same day i.e. 13th February 1962 Biren Mitra and Surendra Mohanty went to Manijori L. P. School and there Rs. 100/- was paid for the improvement of Manijori L. P. School. The witnesses on this point are D.W. 35, Hrudananda Panda who also spoke in support of the allegation in sub-paragraph (t). His evidence is that from Bareipur after the meeting was held at the Library room he proceeded on cycle to Manijori where he performed Puja as a priest at some body's house and then he attended the meeting which was held at Manijori L. P. School and was addressed by Biren Mitra. It is difficult to believe such evidence and the demaneour of the witness did not appear to me to be particularly satisfactory. The only other witness is Mayadhar Sahu who was examined as D.W. 37. But his evidence is contradicted by P.W. 30, Bidyadhar Das who deposed to say that no such meeting was held at Manijori L. P. School. He stated further that Mayadhar Sahu was working for the Socialist Party at the time of election. For reasons already stated in the previous paragraph I do not accept the allegation as true. None of the allegations, therefore, in paragraph 8 sub-paragraphs (c) to (v) are established. As already found there is some basis of truth in some of the allegations but the incidents which actually took place do not amount to corrupt practice.

Issue No. 30: No evidence has been adduced in support of any of the allegations made in paragraph 9 of the recrimination and the finding must be in the negative.

Issue No. 31: This issue relates to the allegations made in paragraph 11 clauses (a) to (e) of the recrimination. In paragraph 11(a) it is alleged that Surendra Mohanty through his Agent, Padma Charan Naik hired a country boat to carry voters from Anupada village to Sorisla booth on 23rd February 1962. This allegation is really a part of the allegation made in sub-paragraph (h) of paragraph 8 and has already been dealt with. There was no occasion at all for carrying voters from Anupada to Sorisla booth and the allegation as made in the recrimination is misconceived.

Sub-paragraph (b) alleges that Purusottam Naik as agent of Surendra Mohanty hired two bullock carts of Bamdev Jena and Brahmananda Mohanty to carry female voters from Kusunpur and Deradi. Practically no evidence has come in support of this allegation. Surendranath Dwivedy himself when deposing as D.W. 2 said that on 23rd February 1962 at Kusunpur he saw some agents of Surendra Mohanty including one Ramesh conveying voters to the polling booth and that he lodged a complaint before the Presiding Officer of the Polling Booth. Now, in the recrimination it is not mentioned that Surendranath Dwivedy himself had direct knowledge to the allegations made in paragraph 11. In the verification he stated that the allegation was true to his information and not that it was true to his knowledge. In the circumstances, it is difficult to accept his testimony that he himself saw Ramesh, agent of Surendra Mohanty engaging bullock carts; and moreover Ramesh is not mentioned in the recrimination petition itself. D.W. 43, Sashikanta Acharya, a clerk of the District Election Office, Cuttack stated that the Presiding Officer of Endar Polling Station sent a complaint petition purporting to be filed by Surendranath Dwivedy along with his report to the Returning Officer. This complaint petition was marked 'IP' for identification but it was not formally proved by Surendranath Dwivedy. Apparently it was not considered relevant. Thus, the allegation in clause (b) of paragraph 11 cannot be taken as proved.

No evidence was adduced in support of the allegation made in sub-para (c). In sub-para (d) it is alleged that Surendra Mohanty through Purusottam Naik hired rickshaws of Sk. Juma and Sk. Ayub to carry voters to Baldev M. E. School and the Girls' M. E. School booths respectively. One witness, namely, D.W. 31, Sk. Juma was examined by the respondent in this connection. He said that Sanatan Rout called him to the house of Purusottam Naik and he was engaged for carrying Congress voters in his rickshaw on the polling day at Kendrapara town and that he was paid Rs. 5/- on that very day by Sanatan Rout and Rs. 10/- more after he had done the work. He stated that he conveyed Muslim voters from

Fakirabad to the polling station at the Girls' High School 10 to 20 times, then he carried some voters stranded in Brahmananda Rout's taxi, which had gone out of order, to Khariang polling station and thereafter he carried Hindu voters from Ayodhyanagar to Baldev Jew polling station, and that from Ayodhyanagar to Baldev Jew M. E. School booth he did about 30 trips. Sanatan Rout, however, deposed for the petitioner as P.W. 16 and denied that he had thus engaged Sk. Juma's rickshaw under the direction of Purusottam Nalk. Sk. Juma was not cited as a witness but was produced without summons he was permitted to be examined because his name is mentioned in the recrimination petition. But he tried to prove much more than what is stated in the recrimination petition. According to that petition, as already quoted above, the voters were carried in Sk. Juma's rickshaw to Baldev Jew M. E. School and in Sk. Ayub's rickshaw to the Girls' School, but Sk. Juma tried to prove that he had carried voters to both the Schools. In view of this discrepancy it is difficult to accept the evidence of D.W. 31, Sk. Juma, as quite true. If in the town a rickshaw was thus used for carrying voters so many times, it would have been natural for the other party to notice the fact and to file a complaint, but there was no such complaint filed in respect of the rickshaws having been engaged by Surendra Mohanty to carry voters to the polling booths of Kendrapara town. The allegation must therefore be held to be not established.

Sub-paragraph (c): In this sub-paragraph the allegation is that on 23rd February 1962 Surendra Mohanty, through Brahmananda Rout hired taxi No. ORC. 2645 to carry voters from Hazari Bagicha and other places to Kharlanga booth. D.W. 44, Sridhar Kar, a pleader practising in Kendrapara, said that he saw Brahmananda Rout carrying voters to the polling station in his taxi, the number of the taxi being ORC. 2645. Though the witness is a practising pleader, it is difficult to accept his testimony. He said that he did not remember whether he acted as polling agent for Surendranath Dwivedy. If he had acted as a polling agent he must have remembered the same and therefore the statement of the witness shows a tendency to conceal the truth. Moreover he said that he is not a member of any political party, but D.W. 7, Krushna Chandra Malik, another practising lawyer of Kendrapara admitted that he as well as Sridhar Kar are members of the P.S.P. party which has been merged in the Sanyukta Socialist Party. P.W. 16, Sanatan Rout stated that Brahmananda Rout had a private car and not a taxi, but at the time of the election it was lying in a broken condition. The petitioner also examined the Motor Vehicles Clerk, namely P.W. 19, Gunanidhi Mohanty, who proved with reference to a register produced in court that the car ORC. 2645 is an Austin 12 and is at present registered in the name of Abdul Bari Khan as owner, but the car is registered as a private car and not a taxi. P.W. 23, Maheswar Rout said that he knew Abdul Bari of Garapur near Rajgarh and that Abdul Bari son of Abdul Latiff owns a small car. The witness used the term taxi but he explained that he calls small cars by the name taxi. In the circumstances it must be held that the hiring of any taxi belonging to Brahmananda Rout with the registration No. ORC. 2645 is not proved at all.

Issue No. 32: This issue relates to the allegation that Surendra Mohanty paid his workers some remuneration beyond their actual expenses, but no evidence has been adduced in support of this allegation and therefore the issue is answered in the negative.

Issue No. 33: This relates to the allegation that some items of election expenses by Surendra Mohanty have been omitted from the Return. The return of Election Expenses of Surendra Mohanty was called for and marked as Ex. 'LL'. But no attempt has been made to prove that any item of expenditure has been omitted therefrom. It was urged that the expenses in connection with the visits of Chief Minister and Deputy Chief Minister to the constituency are not included in the Return of Election Expenses. It is however not expected that Surendra Mohanty would pay for the visits by the Chief Minister or the Deputy Chief Minister. This issue also must be held not to have been proved.

Issue No. 34: This issue relates to the question whether the total expenses incurred by respondent No. 2, i.e. Surendra Mohanty, exceeded the prescribed limit of Rs. 25,000/-. No evidence has been adduced in support of this allegation also and the allegation must be found to be not proved.

Issue No. 35: This issue relates to the question whether Surendra Mohanty or his Agents took the help of the Block Development Officers as mentioned in paragraph 14 of the recrimination.

In paragraph 14 of the recrimination a reference is made to one particular Block Development Officer, namely, Bansidhar Mohapatra, B.D.O. Mahanga, and it is alleged that he on 13th February 1962 distributed money in the villages of Akarpara, Purusottampur and Lalitgiri and other places with the help of Sachidananda Jena, agent of respondent No. 2, and that this was done in order to influence the voters to vote in favour of Surendra Mohanty, the money being paid for the building of new roads. The respondent examined 5 witnesses to prove this allegation, namely, D.W. 12 Pahali Sahu and D.W. 38, Sanatan Bhui of Akarpara, and D.W. 13, Dhaneswar Parida, D.W. 14, Pranakrishna Singh and D.W. 39, Kartik Chandra Singh of Lalitgiri. The evidence of these witnesses is in the same strain. D.W. 12 stated that 6 or 7 days before the polling date Sachidananda Jena, Sarpanch of the locality, came by a jeep along with the B.D.O., Mahanga, Bansidhar Babu and 50 or 60 men assembled and that Sachidananda Jena introduced the B.D.O., Bansidhar Babu to the people and when the people complained that there was a breach in the road which was getting waterlogged and causing difficulty, the B.D.O. authorised the repair of the breach under the management of one Biswanath Rout and Rs. 100/- was advanced to Biswanath Rout for the repair work. D.W. 13 stated that Sachidananda Jena told the people that he had brought the B.D.O. and people should get their road repaired with the funds advanced by him and vote for the Congress candidate, and that one Iswar Chandra Ransingh was advanced a sum of Rs. 200/- for repair to the local road at Lalitgiri. It is not necessary to refer to the evidence of the other witnesses in detail. Though these witnesses stated that Sachidananda Jena was an agent of Surendra Mohanty, they admitted in cross-examination that in 1961 mid-term election Sanatan Jena stood as a candidate for election to the Orissa Legislative Assembly from Mahanga constituency against the official Congress candidate, Surendranath Patnaik, Sachidananda standing as an independent candidate. In the circumstances it is difficult to believe that by February 1962 he had come back to the Congress fold and was working for Surendra Mohanty. It has been stated that as Surendra Mohanty did not depose in connection with this allegation, a finding should be made against him; but a finding in case of corrupt practice has to be based on evidence which proves the allegation beyond reasonable doubt. The fact that Sachidananda Jena stood as an independent candidate against the official Congress candidate a few months before the Parliamentary election leads to the conclusion that it is unlikely that he was acting for the Congress candidate at the time of Parliamentary election; and though Surendra Mohanty did not depose in connection with this allegation, in his rejoinder to the recrimination he denied that Sachidananda Jena ever worked as his agent, and in the Return of his expenses Ex. 'LL' his agents and workers are mentioned but the name of Sachidananda Jena does not find place therein. As regards the B.D.O. having exhorted to the local people to vote for the Congress candidate only one of the 5 witnesses, namely, D.W. 39 said so and the others merely stated that it was Sachidananda Jena who was saying that he had brought the B.D.O. so that their needs in the matter of road repairs might be met, and that the B.D.O. merely advanced the money to certain people to work as men-in-charge of the relief work or earth work for the repair of the road. The B.D.O. Bansidhar Mohapatra is now no longer at Mahanga. He has been transferred to Puri district. A summons was issued for his examination as a Court witness, but unfortunately the summons could not be served, and it was not thought necessary to wait further for his appearance. One Muralidhar Tripathy, the Clerk of the B.D.O.'s office at Mahanga, was examined as D.W. 46 having been summoned to produce the accounts of the expenditure of the Flood Relief Grant maintained at the office of the B.D.O., Mahanga during the period October 1961 to March 1962. D.W. 46 produced an account book but it appeared that he was a new assistant and knew very little of the details of the work of the B.D.O.'s office and had no connection with the Accounts Department. Accordingly the account book could not be proved. The petitioner examined a witness, namely, P.W. 36, Natabar Jena of Lalitgiri. He denied that the B.D.O. of Mahanga had ever visited Lalitgiri along with Sachidananda Jena within 8 or 10 days before the polling for the Parliamentary election in that area, and he denied also that Iswar Chandra Ransingh of his village ever acted as man-in-charge for doing any road repair work. He stated that the breaches to the road caused by the floods of July 1961 were still there and had not been repaired. It appeared to me that this witness came to deny everything, and his testimony therefore cannot be accepted as correct. January and February are the best months for doing earth work for repair of Kacha roads, the floods about the middle of 1961 caused a lot of damage to Kacha roads, as many witnesses admitted, and flood relief grants were given to the local officers for getting them repaired partly as relief work and partly as road construction work.

P.W. 24, Surendra Panda admitted that earth work done as relief work after the floods was done through a local man appointed as man-in-charge, provided the

villagers of that locality agreed to a particular person being appointed as man-in-charge, and if there was no such agreement the work was done departmentally. Sachidananda Jena was the Sarpanch of his Gram Panchayat Kusupur, within which Akarpara and Lalitgiri are situated. It is not at all unworthy of credit that he should have taken the B.D.O. to his Gram Panchayat area to show the breaches of the roads and request him to sanction repairs. D.W. 46 stated that the expenditure of the flood relief grant on Test Relief Work like construction and repair of roads could be sanctioned by the B.D.O. only with the approval of the Subdivisional Officer. It would appear therefore that if any man-in-charge was appointed for doing road repair work out of the Flood Relief grant at Akarpara or Lalitgiri by the B.D.O., Mahanga it must have been done with the approval of the S.D.O. There is no reason to hold that the B.D.O. made the grant of the advance out of the Flood Relief fund on condition that the people of the locality would vote for the Congress. It is difficult to accept the testimony of a witness like D.W. 39 who said that the B.D.O. asked the people to vote for the Congress while making advance for road repair out of the Flood Relief Grant. The respondent, Surendranath Dwivedy sent a telegram Ex. 'HH' to the Collector, Cuttack on 21st February 1962 complaining that the B.D.O. Mahanga was engaged in election propaganda in collusion with the Congress workers and had distributed money for relief work; but Dwivedy in the course of his deposition said that his information was not first-hand information but he heard from the people that the B.D.O., Mahanga was doing election propaganda. Distributing money for relief work was not wrong; it was the duty of the B.D.O. with the general approval of the S.D.O. to do so out of the flood relief grant at his disposal. In the circumstances, I cannot hold that the allegation that Surendra Mohanty took the help of B.D.O., Mahanga for election propaganda is acceptable. In Mahanga Assembly constituency in fact, the votes obtained by Surendra Mohanty are considerably behind the votes obtained by Surendranath Dwivedy as shown by the result sheet Ex. XVIII. This issue is therefore answered in the negative. The allegation that Surendra Mohanty utilised the services of the B.D.O. Mahanga is held not to have been proved.

Issue No. 36: This issue relates to the use of Government machinery to help Surendra Mohanty in his election campaign. The only specific allegation however is in respect of B.D.O., Mahanga and in respect of the then Chief Minister and the then Deputy Chief Minister. The case of B.D.O., Mahanga has already been dealt with. As regards the case of the then Chief Minister and the Deputy Chief Minister, there is no reason to doubt that they participated in the election campaign in favour of Surendra Mohanty, but they did so as Congress chiefs and not in their capacity as executive heads of Government. Accordingly the issue is found in the negative.

Issue No. 37: This issue does not arise as it has not been established that respondent No. 2, Surendra Mohanty had committed any corrupt practice.

Issue No. 38.—In view of the finding that no corrupt practice has been established it cannot be said that the result of the election was affected through corrupt practices committed either by respondent No. 2 or by respondent No. 1.

The concluding issues and Order:

Issue Nos. 39 and 40.—It has been found that 295 valid votes for Surendra Mohanty was wrongly rejected (Issue No. 5) but also that 455 votes liable to rejection were wrongly counted in favour of Surendra Mohanty (Additional Issues Nos. 2 and 3). The result, therefore, is that the votes counted in favour of Surendra Mohanty must be decreased by 160. It has been found that 385 votes counted in favour of Surendranath Dwivedy are liable to rejection (Issues Nos. 6 and 12) but it has also been found that 394 valid votes cast in favour of Surendranath Dwivedy were wrongly rejected (Additional Issue No. 1). Therefore, Surendranath Dwivedy is entitled to have 9 votes added to his votes. Finally it has been found that 74 votes cast in favour of Surendra Mohanty were wrongly counted for Surendranath Dwivedy (Issue No. 12) but also that 125 votes cast in favour of Surendranath Dwivedy were wrongly counted for Surendra Mohanty (Additional Issue No. 3). Accordingly the difference, 51 votes, must be subtracted from Surendra Mohanty's votes, and added to Surendranath Dwivedy's votes. The net result is that 211 votes have to be subtracted from Surendra Mohanty's votes and 60 votes are to be added to Surendranath Dwivedy's vote. This gives a majority of 271 in favour of respondent, Surendranath Dwivedy which is to be added to his declared majority of 66, leading to the result that altogether Surendranath Dwivedy has won by 337 votes. Accordingly the allegation that Surendra Mohanty got a majority of valid votes is found to be wrong. Hence, the election

of respondent No. 1 is not liable to be set aside and respondent No. 2 Surendra Mohanty is not entitled to be declared elected.

As regards costs it has already been mentioned that in election Petition No. 1 inspection of the ballot papers was not allowed. That case was founded on the simple allegation that the Assistant Returning Officer, P. R. Chandra, had been coerced into declaring the result without giving an opportunity to take any action on petitions for recount. If that case had stood by itself, it would have been disposed of very soon. Accordingly, I would consider the cost of Rs. 1000/- as sufficient in that case. As regards Election Petition No. 54 of 1962, inspection of ballot papers was allowed in that case and the case necessarily has been protracted; but the case most probably would have been considerably shortened if respondent No. 1, Surendranath Dwivedy, had not made his vehement allegations as to tampering. It has been mentioned before that after the inspection of ballot papers was completed, Banbehari Mohanty applied for a recount of votes without recording oral evidence, and the then Member of the Tribunal observed that such a recount might be held but for the vehement allegations as to tampering with the ballot papers. Originally Surendranath Dwivedy might have had some apprehension that ballot papers would be tampered with, when he found that the Chief Minister and the Deputy Chief Minister had been in telephonic communication with the Returning Officers at Kendrapara. But after the inspection of the ballot papers he had no reason to persist in his allegation that there had been tampering because it was found that the Assistant Returning Officers had done their duties properly, even though some minor rules like sealing of the bundles of ballot papers had not been complied with. In the circumstances, even though the parties have spent considerably more than Rs. 2,000/-, the sum deposited as security towards cost, I think Rs. 2,000/- should be the limit of the cost awarded against the petitioner Banbehari Mohanty.

It is therefore ordered that the Election Petition No. 1 of 1962 be dismissed with cost of Rs. 1,000/- payable by the petitioner to the respondent out of the amount in deposit and that Election Petition No. 54/62 be dismissed with cost of Rs. 2,000/- payable to respondent No. 1, Surendranath Dwivedy by the petitioner, Banbehari Mohanty out of his deposit. In Election Petition No. 1 of 1962 the respondent will withdraw the whole of his security deposit of his recrimination but in Election Petition No. 54 of 1962 the respondent No. 1, Surendranath Dwivedy will pay Rs. 500/- out of the security deposit as cost to the petitioner, Banbehari Mohanty.

23-11-1964.

S. K. SEN, Member.
Election Tribunal, Cuttack.

[No. 82/1-54/62.]

By order,

V. RAGHAVAN, Under Secy.

New Delhi, the 14th December 1964

S.O. 4306.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the order pronounced on the 30th November, 1964 by the Election Tribunal, Allahabad.

BEFORE SRI B. K. CHOUDHURI, MEMBER, ELECTION TRIBUNAL,
ALLAHABAD

ELECTION PETITION No. 208 of 1962

Shri Hariraj Singh, son of Shri Khazan Singh, resident of Village Rasna, Pargana, Tahsil and District Meerut, U.P.—*Petitioner.*

Versus

1. Shri Shah Nawaz Khan, son of Shri Tikka Khan, resident of 4, Rafi Marg, New Delhi.
2. Shri Maharaj Singh Bharti, son of Shri Nidhram, resident of village Arnawali, Pargana, Tahsil and District Meerut—*Respondents.*

JUDGMENT DELIVERED ON 30TH NOVEMBER 1964

1. Shri Hari Raj Singh, who was an elector of 81-Meerut Lok Sabha Constituency, has filed this Election Petition questioning the election of Sri Shah Nawaz Khan, Respondent No. 1, on the ground that the said respondent committed corrupt practices as defined in section 123 of the Representation of People Act through his agents, supporters and workers.

2. The election of the abovesaid 81-Meerut Lok Sabha Constituency was held on 21st February 1962 and 23rd February 1962. On 21st February 1962 polling took place in Meerut Cantt., Meerut Rural and Kithore Assembly Constituencies while Meerut City and Hastinapur went to poll on 23rd February 1962. All the abovesaid five Assembly Constituencies constitute 81-Meerut Lok Sabha Constituency.

3. Respondent No. 1 and 2 and Shri Shiv Dutt Singh and Shri Ratish Mohan Agarwal were the contesting candidates in the election for the above-said Lok Sabha Constituency.

Respondent No. 1 was a candidate from Indian National Congress Party while Respondent No. 2 (Maharaj Singh Bharti) was a candidate from the Socialist Party of India.

4. The result of the election was declared on 28th February 1962 by the Returning Officer, whereby Respondent No. 1 was declared elected. According to the declaration, the analysis of the votes polled was as follows:—

(1) Sri Shah Nawaz Khan	..	1,32,940
(2) Sri Maharaj Singh Bharti	..	27,900
(3) Sri Shiv Dutt Singh	..	25,503
(4) Sri Ratish Mohan Agarwal	..	4,996

NOTE.—(The above figures are given in paragraph 6 of the written statement of Respondent No. 1. They have been checked from the result sheet and found to be correct.)

The petitioner gave wrong figures in paragraph 6 of the petition.

5. The corrupt practices have been enumerated in sub-paragraphs (a) to (j) of paragraph 12 and in paras 13, 14 and 15 of the petition. Briefly stated they are as follows:—

- (a) Mam Chand and Subhas Agarwal were Editors and Sub-editors respectively of a local daily newspaper "Mairashtra". In the above paper of the 18th February 1962, they published an article by one 'MAKRAND' with the caption "Maharaj Singh Bharti Hindu Nahin Mahmood Ghaznavi Hai". Copy of this article is attached with the petition as Annexure 'A'. The petitioner alleges that this article was an appeal to the voters not to vote for Sri Maharaj Singh Bharti on the ground of religion, caste and race and tended to promote feelings of hatred and enmity between different classes of citizens. It is further alleged that Mam Chand and Subhas Agarwal are friends of Sri Shah Nawaz Khan (Respondent No. 1). They actively supported him in the above election. Meetings of workers namely Dr. Madan, Shanta Ram, Dr. Nizamuddin, Jagdish Saran Rastogi, besides others, supporting Respondent No. 1 were held at the house of Mam Chand, who was a congress worker as well as the polling agent of Sri Jagdish Saran Rastogi, the Assembly candidate of Congress in Meerut City constituency. It is alleged that the above article was published with the consent of Respondent No. 1.
- (b) That the abovementioned issue of Mairashtra also contained false and defamatory statements regarding Sri Maharaj Singh Bharti (Respondent No. 2) on its front page. The contents of the first page is given in Annexure 'B' filed with the petition.
- (c) The abovesaid issue of Mairashtra was distributed in a procession of Congress on the 18th February 1962 in Sadar and Lalkurti, Meerut. In this procession, Respondent No. 1 and Mam Chand both participated. It is further alleged that this issue of Mairashtra was also distributed in the various Hindu Mohallas in Meerut City and Cantt., mentioned in Schedule B by congress workers and supporters of Respondent No. 1, namely Mam Chand, Subhas Agarwal, Rakesh Mohan, Bhagwat Azad and others.

- (d) Mam Chand, in meetings held on the 19th February 1962 in Kankerkhara, Lalkurti and Topkhana, Meerut, read the article of "MAK-RAND" and also the defamatory statements appearing in the front page of Mairashtra dated 18th February 1962. It is further alleged that in meetings at Lalkurti and Topkhana, Respondent No. 1 himself made open reference to the front page of Mairashtra dated 18th February 1962 in relation to the personal character of Respondent No. 2 knowing and believing fully that the statements made therein were false and frivolous.
- (e) Respondent No. 1 through his agents and supporters namely Mam Chand and Subhas Agarwal got the first page of the above-said Daily Mairashtra with some other matter regarding Respondent No. 2 reprinted in large number on 19th February 1962. The contents of the reprints are attached with the petition as Annexure "C". It is further alleged that Respondent No. 1 got the above-said reprints as well as the original issue of the Mairashtra distributed in various villages of the constituency in Meerut City and Meerut Cantt., and in other villages.
- (f) The reprints contained nothing else but false and defamatory statements regarding Respondent No. 2 in relation to his personal character and was an election pamphlet of Respondent No. 1. The reprints were published and distributed with the full knowledge and belief that the above statements were false and at any rate not true. This was done with a view to prejudice the election prospects of Respondent No. 2.
- (g) The above-said reprints were distributed in the procession of congress in large numbers on 20th February 1962 in Meerut City, in which Respondent No. 1 participated.
- (h) The reprints were distributed in Election meetings on 21st February, 1962 in Gujar Bazar and other places by the supporters of Respondent No. 1, who himself participated in these meetings.
- (i) On 23rd February 1962 when polling was going on in Meerut City, the Respondent No. 1 went to Jama Masjid, Meerut and there he appealed to the Muslim brotherhood to vote for him on ground of religion. He reminded them of the atrocities committed by the other communities during the recent communal riots with special reference to the damages caused to the mosques at Meerut. Respondent No. 1 also offered to pay a substantial sum of Rs. 2,200 to the management of Jama Masjid through Mufti Abdul Khaliq, Municipal Commissioner, Meerut, for the loss, destruction and damage done to the Jama Masjid in the recent communal riots.
- (j) On the night of 21st February 1962, Respondent No. 1 in a congress car No. USV 1715 got a false and defamatory announcement made throughout Meerut City through Lekhpal Singh and Reoti Saran who were members of the Jatav community to the effect that Respondent No. 2 is a Jat and the people of his community have beaten members of the Jatav community and, therefore, the Jatav community should vote against Maharaj Singh Bharti who is a Jat.

6. (a) Khan Bahadur Mohammad Aijaz Husain who is a prominent citizen of Meerut City was a prospective candidate against congress in the last general elections. It is alleged that the congress hierarchy with the consent of Respondent No. 1 and Sri Jagdish Saran Rastogi induced K. B. Aijaz Husain not to stand in General Election against the congress by promising him grant of sumptuous loan from the Government and a seat in the U.P. Legislative Council. As a result of the above promise and inducement, K. B. Aijaz Husain voted and supported respondent No. 1 and congress candidates in the last General Election.

(b) The Congress Government in Uttar Pradesh with the consent of Respondent No. 1 and other congress candidates deferred the selection of Panches of Nyaya Panchayats of different villages of the District. Respondent No. 1 and his supporters induced several persons named in paragraph 13(b) of the petition to vote and support the congress candidates in the election by promising to get them selected Panches by the Selection Body. As a result, these persons supported Respondent No. 1 and other congress candidates.

7. Respondent No. 1 procured the services and assistance of Laxmi Narain for getting a vast number of votes under his influence for the furtherance of the prospects of his election. Laxmi Narain was then and is working as Sarpanch of the Nyaya Panchayat Arnawali. The petitioner alleges that the above act of Respondent No. 1 is corrupt practice as defined in section 123(7) of the Representation of People Act.

8. Respondent No. 1, his agents and supporters with his consent hired numerous Rickshaws in Meerut City and Cantonment for bringing the voters from their houses to the polling booths. They also procured numerous cars from contractors and friends of Delhi for the above purpose. In some villages, Respondent No. 1 procured very many tractors and other vehicles for the conveyance of the electors to and from the polling stations. These acts of Respondent No. 1 come within the definition of corrupt practice under section 123(5) of the Representation of People Act.

9. The petitioner, therefore prayed that the election of Respondent No. 1 from the 81-Meerut Lok Sabha Constituency be declared null and void and that the petitioner be awarded costs of petition against Respondent No. 1.

10. Respondent No. 1 asserted that no corrupt practice was committed at the election either by him or by his election agents and stated that they took all reasonable means of preventing the commission of any corrupt practice at the election and that his election is not liable to be set aside.

- (a) Respondent No. 1 denied that the Article by 'MAKRAND' was an appeal of the kind alleged in the petition. He denied that Mam Chand or Subhas Agarwal were his friends or that they actively supported him in the election. Respondent No. 1 denied that any meeting of his workers, supporters was held at the house of Mam Chand. Respondent No. 1 denied that the Article in Mairashtra dated 18th February 1962 mentioned in paragraph 12(a) of the petition was published with his consent. He stated that Mam Chand as far as he was aware was not even a member of the congress at the time of the election and that he never held any office in the congress organisation at any time. Respondent No. 1 further stated that the Mairashtra disowned the article contributed by MAKRAND in its issue of 19th February, 1962.
- (b) Respondent No. 1 stated that on information received by him after election, he learnt that the statements in Annexure 'B' were published in the issue of Mairashtra as alleged. He asserted that he had no earlier knowledge of this publication nor has he any knowledge as to whether the statements contained therein are false.
- (c) Respondent No. 1 denied that the issue of Mairashtra referred to in the petition was distributed in any procession of the congress on any date. It was certainly not distributed in any procession in which this respondent participated.
- (d) Respondent No. 1 stated that as far as he is aware no article of Mairashtra was read in any meeting having any connection with this respondent on any date in any locality of Meerut. The allegation that he made a reference to the front page of Mairashtra in any meeting was denied as false.
- (e) Respondent No. 1 denied that he through his agents or supporters got reprinted the first page of the said Mairashtra or any other matter regarding Respondent No. 2. He also denied that the original issue and the reprint mentioned in the petition were at any time issued as pamphlet of this respondent or that the issue of Mairashtra was at any time distributed anywhere in the constituency by or at the instance of this Respondent.
- (f) Respondent No. 1 denied that the reprints mentioned in paragraph 12(f) of the petition constituted an election pamphlet. The reprints were neither published nor propagated within his knowledge.
- (g) Respondent No. 1 denied that reprints were distributed by any of his workers or agents or by any person within his knowledge.
- (h) Respondent No. 1 denied that he participated in any election meeting of the congress in Meerut on the 21st February 1962. The allegation of distribution was denied as without foundation.

- (i) Respondent No. 1 admitted that he went to the Jama Masjid Meerut on 21st February 1962. He stated that he joined the prayers in the Jama Masjid on the above date as it was a Friday. He emphatically denied that he made any appeal of any kind in the Jama Masjid or made any speech or any public utterances beyond participating in the prayers.

He denied that he offered to pay the sum of Rs. 2,200 to the Jama Masjid.

- (j) Respondent No. 1 denied that any announcement was made from the car bearing No. USV 1715. He stated that he was not aware of any incident of the beating by members of the Jatav community.

11. (a) The Respondent No. 1 admitted that Khan Bahadur Mohammad Aijaz Husain is a prominent citizen of Meerut City and that he had fought in the previous election against the congress. He denied that K. B. Mohd. Aijaz Husain was promised a seat in the U.P. Legislative Council by the congress hierarchy. He stated that the allegation that promise was made to K. B. Aijaz Husain with the consent of this respondent has been made up for the purposes of this petition and is without any foundation.

(b) Respondent No. 1 denied the allegations made in paragraph 13(b) of the petition. He stated that he was not aware of the reasons for deferring the selection of Panches of Nyaya Panchayats. He denied that any person voted for him as a result of any promise alleged in the petition.

12. Respondent No. 1 denied that he procured the services and assistance of Laxmi Narain and stated that he was not even aware that a vast number of voters were under the influence of the aforesaid Laxmi Narain.

13. Respondent No. 1 denied that the allegations made in paragraph 15 of the petition. He denied that any of his agents or supporters hired Rickshaws for taking the voters to the polling booths. He also denied that he procured any of the motor vehicles referred to in Schedule D for the said purpose or any tractors of the persons named in the petition were used in the election.

14. Respondent No. 1 pleaded that the petitioner and Respondent No. 2 have close relations with each other and are on very cordial terms and the petition has been filed at the instance and instigation of Respondent No. 2 who having lost the election has set up the petitioner for this gamble in litigation based upon false and incorrect grounds.

15. The entire life record of the Respondent and his record in this constituency, from which he has been elected to the Lok Sabha for the last ten years, will clearly show that this respondent, has not only not indulged in any communal propaganda or in any appeal on the ground of caste, community or religion, but has definitely set his foot against even the remotest action which may have a religious, communal or caste colour. In fact, his own views, in a speech made by him, have been reported in the very issue of Mairashtra which has been made the subject of complaint and will show the attitude that this Respondent has held and expressed throughout.

16. Though this Respondent had no connection of any kind with the paper 'Mairashtra' the various issues of that paper show that it was, on the whole, being conducted on non-communal lines, and had a non-communal policy. The article of MAKRAND complained of, though the respondent had no knowledge about it, might have been due to some personal conflict or animosity and in any case this respondent had no connection with, and was wholly unaware of, the publication of this article.

17. This respondent has an unbroken record, in the past, of non-communal activities and it was not possible for him, as a candidate on behalf of the Indian National Congress, to indulge in any communal propaganda and thereby lose the most valuable assets in his possession. The allegations in the petition to the contrary are without substance.

18. The following issues were framed on the above pleadings:—

1. (a) Whether Sri Mam Chand and Subhas Agarwal were agents and supporters of Respondent No. 1 and whether they actively supported him in his election?
- (b) Whether the article in the local daily newspaper 'Mairashtra' (Annexure A) was published on the 18th February 1962 with the consent of Respondent No. 1?

(c) Whether the contents of this article amount to corrupt practice as mentioned in sub-section 3 or 3(A) of section 123 of the Representation of People Act?

2. (a) Whether the article in 'Mairashtra' (Annexure B) contained false and defamatory statement regarding Shri Maharaj Singh Bharti, Respondent No. 2?

(b) Whether the said issue of 'Mairashtra' was distributed in large number in a procession of congress in Sadar and Lalkurti, Meerut on the 18th February 1962, and

Whether Respondent No. 1 and Sri Mam Chand participated in the same?

(c) Whether this issue was also distributed in various Hindu Mohallas mentioned in Schedule B of the Meerut City and Cantt. by congress workers and supporters of Respondent No. 1 as alleged in para 12(c) of the petition?

(d) Whether the said article was read by Sri Mam Chand in a meeting held on 19th February 1962 in Kankerkhera, Lalkurti and Topkhana, Meerut and

(e) Whether in the meetings of Lalkurti and Topkhana, Respondent No. 1 himself was present and made a reference to the front page of the above said article "knowing and believing the statement made thereunder to be false and frivolous"?

(f) Whether Respondent No. 1 committed corrupt practice as defined in sub-section (4) of section 123 of the Representation of People Act?

3. (a) Whether Respondent No. 1 through his agents and supporters Shri Mam Chand and Shri Subhas Agarwal reprinted in large number the above said article on the 19th February 1962 (Annexure C)?

(b) Whether the original issue of Mairashtra and the reprints were issued as pamphlets by Respondent No. 1 and

(c) Whether he distributed the reprints and original issue of the said Mairashtra in the various villages of the constituency in Meerut City and Meerut Cantt. through his supporters and agents? The names of such agents and workers are mentioned in Schedule C?

(d) Whether the abovesaid reprints contained false and defamatory statement regarding respondent No. 2 in relation to his personal character and

Whether it was an election pamphlet of Respondent No. 1, as alleged by the petitioner?

Whether these acts were done with a view to prejudice the election prospects of Respondent No. 2?

(e) Whether the abovesaid reprints were distributed with the consent of Respondent No. 1 in the procession of congress in large numbers on 20th February 1962 in Meerut City by the workers mentioned in para 12(g) of the petition?

Was Respondent No. 1 also present and participated?

(f) Whether the reprints were distributed in the election meeting of congress in Meerut City on 21st February 1962 in Gujri Bazar and other places by the supporters of Respondent No. 1, namely Shri Mam Chand, Bhagwat Azad and Subhas Agarwal? and whether Respondent No. 1 himself attended this meeting?

4. (a) Whether on 23rd February 1962 when the polling was going on in Meerut City, the Respondent No. 1 went to the Jama Masjid, and there he appealed to the Muslim brotherhood to vote for him on the ground of religion?

Whether he also reminded the Muslim brotherhood of Meerut of the atrocities committed by the other communities during the recent communal riots with special reference to the damages suffered by the mosques at Meerut?

(b) Whether Respondent No. 1 also offered to pay Rs. 2,200 to the Masjid through Sri Mufti Abdul Khaliq, Municipal Commis Meerut for the loss, destruction and damage done to the Jama in the recent communal riots?

5. Whether on the night of 21st February 1962, Respondent No. 1 in a congress car No. USV 1715 got a false and defamatory announcement against Respondent No. 2 that Respondent No. 2 is a Jat and his community people have beaten members of the Jatav community and therefore the whole of Jatav community should vote against Shri Maharaj Singh Bharti, who is a Jat? The above announcement promoted feelings between different classes of people on the basis of the caste?

6. Whether Khan Bahadur Mohammad Aijaz Husain was a prospective candidate against Congress in the general election in question?

Whether he was promised by congress hierarchy namely Shri Hafiz Mohd. Ibrahim, Shri C. B. Gupta and Ch. Charan Singh with the consent of Respondent No. 1 a seat in the U.P. Legislative Council and a sumptuous loan and grant from the Government with the object of inducing him not to stand in the General Elections against the congress and vote and induce others under his influence to vote for Respondent No. 1 and other congress candidates of the Assembly constituencies?

Whether in view of the promise and inducement Khan Bahadur Aijaz Husain voted and supported Respondent No. 1?

Whether the above act amounted to corrupt practice of bribery as defined in section 123(1) of the Representation of People Act?

7. Whether Respondent No. 1 and his supporters namely Sri Basant Lal, Sri Hari Singh and Km. Sharda Devi induced Sri Ghasi Ram of village Dabka, Rajgir of village Pooth, Shiv Datt Shastri of village Machhra, Raj Singh of village Kurall, Imtiyaz Ali of village Murlipur to vote and support the congress candidate in the election in consideration of promises for getting them selected Panches by the Selection Body?

8. (a) Whether the Respondent No. 1 procured the services and assistance of Laxmi Narain for getting a vast number of votes under his influence for the furtherance of the prospects of his election?

(b) Whether Laxmi Narain was and is working as Sarpanch of the Nyaya Panchayat Arnawali?

Whether the above act of Respondent No. 1 comes within the purview of section 123(7) of the Representation of People Act?

9. (a) Whether Capt. H. R. Anand, Hakim Saifuddin and Sardar Hari Dutt Singh were agents of Respondent No. 1?

(b) Whether Respondent No. 1 and his agents named above with his consent hired Rickshaws in Meerut City and Cantonment for bringing the voters from their houses to the polling booths?

(c) Whether Respondent No. 1, his agents and supporters with his consent procured cars from contractors and friends of Delhi (Schedule B) for the above said purpose?

(d) Whether in some village Respondent No. 1 procured tractors of Sri Chhote Lal of Sheolal and Sri Niadar Singh of Rasna for the conveyance of the electors to and from the polling stations on the polling day?

Whether the above acts of Respondent No. 1 come within the definition of corrupt practice as defined in section 123(5) of the Representation of People Act?

10. Whether the election of Respondent No. 1 from 81-Meerut Lok Sabha Constituency is liable to be set aside?

11. Before considering the charges of corrupt practice levelled against Respondent No. 1, I would like to make some observations pertinent to the case.

The charges of corrupt practice in the election petition have been bodily lifted out of the Representation of the People Act and nearly all the corrupt practices as defined in section 123 *ibid* have been incorporated in the petition. Out of the eight forms of corrupt practices mentioned in the section, only those under section 123(2) and 123(6) have been omitted. All the other corrupt practices, namely of bribery under section 123(1), appeal on the ground of religion, caste or community under section 123(3), promotion of feelings of enmity or hatred between different classes of the citizens of India on ground of religion, caste and race under section 123(3A), publication of any statement of fact which is false relating to the personal character and conduct of any candidate under section 123(4), hiring and procuring of vehicles for conveyance of voters under section 123(5) and obtaining or procuring assistance from the persons in the service of Government under section 123(7) have been alleged and included in the petition.

20. At the final hearing, the allegation of corrupt practice under section 123(1) covered by Issue Nos. 6 and 7, corrupt practice under section 123(5) covered by Issue No. 9 and corrupt practice under section 123(7) covered by Issue No. 8 were given up by the counsel for the petitioner, mainly because no evidence was led by the petitioner in support of the above allegations.

21. Main allegations in the petition that remain for decision centre round the alleged appeals on the ground of religion or caste, the promotion of feelings of enmity or hatred between different classes of the citizens of India and the publication of false statements relating to the personal character and conduct of Maharaj Singh Bharti Respondent No. 2, who was a rival candidate set up by the Socialist party against Respondent No. 1 a candidate nominated by the Indian National Congress for the Parliamentary Seat from 81-Meerut Lok Sabha Constituency. Respondent No. 1 was declared elected by an overwhelming majority of 45,040 votes. Lastly that on the night of 21st February 1962 Respondent No. 1 got a false announcement made from a congress car No. USV 1715 to the effect that Respondent No. 2 is a Jat and his community have beaten members of the Jatav community and therefore, the whole of Jatav community should vote against Respondent No. 2. The enquiry in the election petition is thus confined within a narrow compass, that is allegations of corrupt practice under section 123(3), 123(3A) and 123(4) of the Representation of People Act, covered by Issues 1 to 5.

22. Allegations in respect of the first charge of corrupt practice under section 123(3) of the Representation of People Act are made in paragraph 12(i) of the petition as follows:—

"That the Respondent No. 1 on 23rd February 1962 when polling was going on in Meerut City went to the Jama Masjid, Meerut, and there he appealed to the Muslim brotherhood to vote for him on grounds of religion. He also reminded the Muslim brotherhood of Meerut of the atrocities committed by the other communities during the recent communal riots with special reference to the damages suffered by the mosques at Meerut. Shri Shah Nawaz Khan, Respondent No. 1, also offered to pay a substantial sum of Rs. 2,200 to the management of Jama Masjid through Sri Mufti Abdul Khalik, Municipal Commissioner, Meerut for the loss, destruction and damage done to the Jama Masjid in the recent communal riots".

23. Allegations of corrupt practice under section 123(3A) of the Representation of People Act are made in paragraph 12(a) and 12(j) of the petition. It refers to an article published in the local daily newspaper "MAIRASHTRA" dated 18th February 1962 under the name of MAKRAND. Mam Chand (R.W.31) is the Editor of this local daily newspaper "MAIRASHTRA" and one Subhas Agarwal was its sub-editor. The article by MAKRAND is reproduced in Annexure A of the petition. It is alleged that the publication in the MAIRASHTRA, dated 18th February 1962, were at the instance of Respondent No. 1 and the newspapers were distributed by his workers, agents or supporters with his consent.

24. The allegation of corrupt practice under section 123(4) of the Representation of People Act is contained in paragraph 12(b) of the petition. It is alleged that the local daily newspaper "MAIRASHTRA" dated 18th February 1962 also published an article containing false statement of facts in relation to the personal character and conduct of Maharaj Singh Bharti Respondent No. 2. This article is reproduced in Annexure B attached to the petition. It is further alleged that copies of MAIRASHTRA dated 18th February 1962 containing the above article were distributed in the constituency and further that Respondent No. 1 got the issue of MAIRASHTRA, dated 18th February 1962 reprinted and distributed as his election pamphlets.

25. Section 100 of the Representation of People Act lays down the grounds for declaring the election to be void.

The relevant sub-section of Section 100 are given below:—

“(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(ii) by any corrupt practice committed in the interests of the returned candidate (by an agent other than his election agent).”

26. No allegation has been made in the petition that the result of the election was materially affected by any corrupt practice, nor has any evidence been led to that effect.

Respondent No. 1, Shri Shah Nawaz Khan had no election agent, neither has it been alleged in the petition that he had any election agent.

27. The controversy, therefore, centres round the question whether the above-mentioned corrupt practices, as alleged, were committed directly by Respondent No. 1 himself or whether they were committed by his workers, agents or supporters with his consent. There is no allegation in the petition that Respondent No. 1 himself got the mischievous articles published in the daily local newspaper, MAIRASHTRA, dated 18th February 1962 or that he himself distributed them in the constituency. The petitioner has, therefore, to prove that there was publication and distribution as alleged by him by workers, agents or supporters of Respondent No. 1 and further that this was done with the consent of Respondent No. 1.

FINDINGS

28.

Issue No. 1(a)—	No. No.
Issue No. 1(b)—	No.
Issue No. 1(c)—	No.
Issue No. 2(a)—	No.
Issue No. 2(b)—	No. No.
Issue No. 2(c)—	No.
Issue No. 2(d)—	No.
Issue No. 2(e)—	No.
Issue No. 2(f)—	No.
Issue No. 3(a)—	No.
Issue No. 3(b)—	No.
Issue No. 3(c)—	No.
Issue No. 3(d)—	No. No. No.
Issue No. 3(e)—	No. Respondent No. 1 was in the procession. No MAIRASHTRA was distributed.
Issue No. 3(f)—	No. Respondent No. 1 did not attend.
Issue No. 4(a)—	Respondent No. 1 went to Jama Masjid on 23rd February 1962 to say his prayers.
	He did not make any appeal to Muslims to vote for him on ground of religion.
Issue No. 4(b)—	Second part of Issue No. 4(a)—No.
Issue No. 5—	No.
Issue Nos. 6, 7, 8(a) and 8(b)—	Findings on these issues—No.
Issue Nos. 9(a), (b), (c), (d)—	Findings on these issues—No.
Issue No. 10—	No.

29. Reasons for the findings on Issues Nos. 1 to 5.
Issue No. 1(a)

It is not disputed that Mam Chand (R.W.31) is the Editor of the local daily newspaper MAIRASHTRA and that Subhas Agarwal was the sub-editor. Petitioner has filed MAIRASHTRA dated 18th February 1962 (Ex. P.2), dated 20th

February 1962 (Ex. P.1) and dated 20th February 1962 (Ex. P.3 and P.4) said to be reprints. The offending articles have been published in the above newspapers to which reference will be made later. The allegations in paragraph 12(a) are:—

- (1) Mam Chand and Subhas Agarwal are friends of Sri Shah Nawaz Khan, (Respondent No. 1);
- (2) Meetings of workers Dr. Madan, Sri Shanta Ram Dunge, Dr. Nizamuddin, Jagdish Saran Rastogi, amongst others supporting Respondent No. 1 in the election were held at the house of Mam Chand.
- (Note—Names of Dr. Madan, Shanta Ram Dunge, Dr. Nizamuddin, Jagdish Saran Rastogi were added by an amendment of the petition).
- (3) Mam Chand was an important organiser of the election campaign of Respondent No. 1 and an important personality in the congress organisation at Meerut.
- (4) Mam Chand canvassed vigorously for Respondent No. 1 and other congress candidates personally and through his paper MAIRASHTRA and attended workers and public meetings.
- (5) Mam Chand was also polling agent of Jagdish Saran Rastogi, a congress candidate of the Assembly.

[Note—This fact is not disputed.]

30. Petitioner has examined himself as P.W.13 and has also examined Maharaj Singh Bharti (Respondent No. 2) as P.W.15. The petitioner has not stated in his examination-chief that Mam Chand and Subhas Agarwal were agents of Respondent No. 1, Maharaj Singh Bharti (P.W.15) merely says that Mam Chand is a friend of Respondent No. 1 and that he is a supporter and active member of Congress. It will be clear from the cross-examination of the above named witnesses that they have no personal knowledge whether Mam Chand or Subhas Agarwal were even -/4/- annas member of the congress. They are unable to say what office these two persons held in the congress. The petitioner evidently had no occasion to get acquainted with Mam Chand except that both are political workers. About Subhas Agarwal he says that they are common friends in Mohalla where Subhas Agarwal resides; that is the only source of acquaintance with him.

The above evidence is too meagre to support the petitioner's allegation that Mam Chand and Subhas Agarwal are friends of Respondent No. 1.

31. The petitioner verified the allegations in paragraph 12(a) of the petition to be true to his personal knowledge, but in his cross-examination he stated that he could not say how many meetings Mam Chand attended. He admitted that the statement in paragraph 12(a) that "Mam Chand attended workers' meeting" was not in his personal knowledge and he could not justify the statement in the verification and in the affidavit that the allegations contained in paragraph 12(a) were from his personal knowledge.

In paragraph 33 of his cross-examination, the petitioner admits that he did not attend meetings of the workers of Respondent No. 1 mentioned in para 12(a) of his petition. He could not say the exact number of public meetings in which Mam Chand and the workers of Respondent No. 1 had attended in connection with the election. He only attended one public meeting mentioned in paragraph 12(h) of the petition and another held in Gujri-bazar on 21st February 1962. Besides this, he did not attend any other public meetings in connection with the election of Respondent No. 1.

I find that he made a false verification as well as swore a false affidavit in respect of the allegations in paragraph 12(a) of the petition.

In attempting to prove his allegations made therein the petitioner by swearing a false affidavit has rendered himself liable to a graver charge. He has failed to show that Mam Chand and Subhas Agarwal were friends of Respondent No. 1 or that they had supported him in the election.

32. A criminal complaint has been filed by Respondent No. 2 against Mam Chand, Subhas Agarwal and Makrand. A Civil Suit No. 26 of 1963 was also filed by Respondent No. 2 against Mam Chand and Subhas Agarwal. In none of these proceedings, it has been alleged that Mam Chand and Subhas Agarwal

were agents of Respondent No. 1. Maharaj Singh Bharti (P.W. 15) in his cross-examination has admitted only after being confronted with copy of complaint and plaint that no such allegation had been made by him. (See para 56 of P.W. 15).

33. Mam Chand (R.W.31) has denied that he was agent of Respondent No. 1. He stated that he did not canvass for Respondent No. 1 nor did he support him or worked with him nor was any meeting held at his house, nor he nor Subhas Agarwal were members of Congress. On the other hand, he says that Subhas Agarwal was a member of R.S.S. and that in the last election he had supported the Jan Sangh candidate. There is no suggestion in the cross-examination of Mam Chand (R.W.31) that he or Subhas Agarwal were agents of Respondent No. 1.

Sri Shah Nawaz Khan (R.W.32) has denied that Mam Chand canvassed for him. He stated that he had never seen Subhas Agarwal. There is nothing to suggest in his cross-examination that Mam Chand or Subhas Agarwal were his agents.

34. It was urged on behalf of the petitioner that the issues of MAIRASHTRA (Ex.P.1, P.4, P.6, P.16 to P.21, P.26, P.32 to P.35) would show that this daily local newspaper MAIRASHTRA was doing election propaganda for the congress and Respondent No. 1 as his photo and life sketch also appeared in them.

There is no substance in the above contention as Mam Chand (R.W.31) has stated that he had also published the life sketch of Jan Sangh and independent candidates. News item about P.S.P. candidate was also published. Mam Chand (R.W.31) has stated that he received advertisements from the Post and Telegraphs, Planning and other Departments of the Government of India and he received only one advertisement from the Railway in the end of January 1962.

The local daily newspaper MAIRASHTRA is a pro-congress paper no doubt, but it is not an organ of the congress. No inference can be drawn from the support given by Mam Chand, (R.W.31) in his newspaper MAIRASHTRA that he was agent of Respondent No. 1 or worked for him in the last election.

The petitioner has failed to show that Mam Chand and Subhas Agarwal were friends of Sri Shah Nawaz Khan, Respondent No. 1 or that they actively supported him in the last election.

The petitioner has also failed to show that meetings of workers supporting Respondent No. 1 in his election were held at the house of Mam Chand or that Mam Chand was an organiser of the election campaign of Respondent No. 1.

35. A passing reference may be made to the three photographs filed by Maharaj Singh Bharti (P.W.15), when he was being cross-examined. He says he filed them at the instance of Hari Raj Singh (Petitioner). No satisfactory reason has been given by him why he produced them at such a late stage. He says he obtained these photographs from Dr. Madan Mohan, who told him that they were taken in a public meeting. He could give no explanation how he managed to secure these photographs from Dr. Madan Mohan, who is alleged by the petitioner to be the worker of Respondent No. 1 [vide para 12(a) of the petition].

It is really strange why Dr. Madan Mohan would go out of his way to help Respondent No. 2 a rival candidate. The petitioner has not examined Dr. Madan Mohan to show that these photographs were taken at the time of the alleged meeting of workers and supporters of Respondent No. 1. Respondent No. 2 (P.W. 15) has no personal knowledge of the fact that the photographs Nos. 1 and 2 were taken at the time of the public meeting, nor has he any personal knowledge of the date on which these persons had assembled in the meeting, neither could he say that all the persons who appear in the photograph are friends and supporters of Sri Shah Nawaz Khan. He has no personal knowledge of the date or the occasion on which photograph No. 3 was taken or the place where it was taken. Again, he says that Dr. Madan Mohan told him that this photograph was taken at an At Home after the election.

Maharaj Singh Bharti (P.W.15) admits that at times he also invites members of rival political parties on occasions of rejoicing (vide paras 22, 23, 24 of the cross-examination of P.W.15).

In my opinion, these photographs prove nothing.

36. Issue No. 1(b).—Petitioner in para 68 of his deposition admits that he has no personal knowledge of the fact that the article was published with the consent

of Respondent No. 1. It was only his inference that the article was so published, as alleged in para 12(a) of the petition. There is no averment in the statement of Respondent No. 2 (P.W.15) that the article in the MAIRASHTRA were published with the consent of Respondent No. 1.

The mere fact that Mam Chand was a polling agent of Jagdish Saran Rastogi, a Congress candidate for the Assembly Seat or the fact that Respondent No. 1 related upon the cooperation of M.L.As., would not go to show that the mischievous articles were published by Mam Chand with the consent of Respondent No. 1.

37. Mam Chand (R.W.31) has in the very next issue of MAIRASHTRA dated 19th February 1962 (Ex.R.3), disassociated himself with this article by MAKRAND. This is admitted by the petitioner (P.W.13).

Mam Chand (R.W.31) has also mentioned in the course of his evidence that he contradicted this article giving reasons for doing so. Moreover, Sri Shah Nawaz Khan (R.W.32) has clearly stated that Gujars were in majority in one of the segments in the constituency. In Meerut district there were three Jat candidates and one Gujar candidate nominated by the Congress for the Assembly segment of Respondent No. 1. The majority of witnesses of Respondent No. 1 and his workers were Jats and Gujars.

It is clear that Sri Shah Nawaz Khan would not possibly gain anything by such a propaganda as has been attributed to the article by MAKRAND. It is difficult to believe that Respondent No. 1, under the above circumstances, would have consented to such an article published under the name of MAKRAND in the MAIRASHTRA dated 18th February 1962.

38. Ex.R.2 is a copy of the complaint filed by Respondent No. 2 against Mam Chand and Subhas Agarwal on the basis of the impugned article by MAKRAND appearing in MAIRASHTRA. There is no allegation in this complaint that these articles were published with the consent of Respondent No. 1, neither there is any such averment in the plaint Ex.P.11 filed by Respondent No. 2 against Mam Chand and Subhas Agarwal for damages for publishing these articles.

39. In para 12(a) of the petition, it is alleged that the offending article was published by one MAKRAND indicating that MAKRAND was a distinct individual who contributed the article. The petitioner (P.W.13) in the witness-box has taken a different stand. He stated that MAKRAND was the pen-name of Mam Chand Mittal. This, he says, he learnt after filing the petition from a statement made in an application Ex. P.8 in a criminal complaint that MAKRAND was the pen-name of Mam Chand. He says he learnt this also from the order Ex.P.9 of the Court on that application. But when he was confronted with the certified copy of the complaint, he had to admit that there is no statement in Court that MAKRAND is the pen-name of Mam Chand (See para 45 of his cross-examination). The order of the Magistrate also does not support the petitioner's contention that MAKRAND was the pen-name of Mam Chand.

Respondent No. 2 (P.W.15) who is mainly concerned with the criminal complaint referred to by the petitioner (P.W.13), admits in para 15 of his cross-examination that he has no personal knowledge of the fact that MAKRAND was the pen-name of Mam Chand. From Para 56 of his cross-examination, it is abundantly clear that there was no decision by the Magistrate concerned to the effect that MAKRAND was the pen-name of Mam Chand Mittal. Mam Chand (R.W.31) has denied that MAKRAND was his pen-name.

40. There is no evidence on record to show that the article in the local daily newspaper MAIRASHTRA dated 18th February 1962 Annexure A was published with the consent of Respondent No. 1. When P.W. 15 was asked in cross-examination whether in his complaint he had alleged that the article in question in MAIRASHTRA had been published at the instance or at the connivance or with the consent of Sri Shah Nawaz Khan, he gave an evasive reply that he did not remember. Ex. R. 2 is the copy of the complaint. There is no allegation that the article was published by Mam Chand with the consent of Respondent No. 1.

41. In his suit for damages filed against Mam Chand and Subhas Agarwal (Civil Suit No. 26 of 1963) he made no allegation that the article were published with the consent of Respondent No. 1.

It has been held by a Division Bench of Rajasthan High Court in *Krishna Kumar Vs. Krishna Gopal*—A.I.R. 1964 Rajasthan 21, as follows:—

"The approval or consent of the candidate to a corrupt practice committed by the agent to promote his election prospects is not implied; nor is there any presumption, either of law or fact that such an act is done

at the instance of or with the express or implied consent of the candidate. The drawing of such presumption would be repugnant to the well-established rule of practice that such proceedings are quasi-criminal in nature”.

In Nani Gopal Swami Vs. Abdul Hamid Choudhury and another—19 E.L.R. 175, it has been held as follows:—

“If an offending article appears in a paper, which is proved to have circulation and is read by the public, this would be sufficient publication in the eye of law to constitute corrupt practice within the meaning of the Act, provided it is also found that the said publication was at the instance, or with the consent, of the candidate or his Election Agent. The real point of the decision in *Maulana Abdul Jalil Choudhury V. Rathindra Nath Sen* (13 E.L.R. 290) was that the publication must be proved to be with the consent of the candidate.

In order to fasten the liability of the editor's act on a candidate, it is necessary to establish that the editor was acting as an agent of the candidate in connection with the election and that too, with his consent. Mere action of the editor beneficial to the candidate would not be enough to prove that he was acting as an agent in connection with the candidate's election; further it should also be proved that he was doing the alleged act with the consent of the candidate”.

The petitioner has failed to prove the allegation that the articles appearing in local daily newspaper MAIRASHTRA by MAKRAND was published with the consent of Respondent No. 1. A mere reading of the article by MAKRAND in MAIRASHTRA (Ex. P. 2) would show that it could not have been published at the instance of or with the consent of Sri Shah Nawaz Khan Respondent No. 1. In this very issue of MAIRASHTRA, there is a report of the speech made by Respondent No. 1, in which he appealed to Hindus and Muslims not to be influenced by communal considerations. This is admitted by the petitioner (P.W. 13) and also by Respondent No. 2 Maharaj Singh Bharti (P.W. 15) that such an appeal was made by Respondent No. 1. The publication of this speech was also proved by Mam Chand (R.W. 31).

42. *Issue No. 1(c)*.—The mischievous article by MAKRAND appearing in MAIRASHTRA dated 18th February 1962 is under the caption “Maharaj Singh Bharti Hindu nahin Mahmood Ghaznavi hai”. In this article, there is no appeal to vote or refrain from voting on the ground of religion.

The passage beginning with the words—“Apne Mandir Masjid ya Girja” and ending with the words “Vote do” is not an appeal on the ground of religion, but it is an appeal to the religious minded people to have their religious institutions. However the concluding paragraph of this article beginning with the words “Unko is durbyohar” and ending with the words “Parantu Hindu dharm ko mita kar” amounts to corrupt practice within the meaning of section 123(3A) of the Representation of People Act.

43. *Issue No. 2(a)*.—The petitioner has alleged in para 12(b) of his petition that the issue of MAIRASHTRA dated 18th February 1962, besides the above article of MAKRAND contained false and defamatory statement regarding Maharaj Singh Bharti, Respondent No. 2 on its front page. It contained nothing else but false and defamatory statement regarding Respondent No. 2. The contents of the article are given in Annexure B.

44. Section 123(4) of the Representation of People Act lays down that:

“The publication by a candidate or his agent or any other person, (with the consent of a candidate or his election agent) of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election”.

The word “defamatory” has not been used in the section. Therefore, mere defamatory statement against a candidate will not amount to a corrupt practice.

45. The petitioner has verified the allegations in para 12(b) of his petition as true to his personal knowledge, but it is clear from the nature of his cross-examination that he could have no personal knowledge about the falsity or truth of the

allegations relating to the personal conduct or character of Respondent No. 2 published in the MAIRASHTRA. The allegations are that Respondent No. 2 has embezzled school funds and misappropriated building materials during his managership. He has made merely a bald statement in para 4 of his evidence that the allegations against Maharaj Singh Bharti contained in these papers were false.

46. Initial burden of proving that these allegations in MAIRASHTRA dated 18th February 1962 reproduced in Annexure B were false lay on the petitioner.

In *Bishwanath Upadhyaya Vs. Haralal Das and others*—16 E.L.R. 405, it has been held as follows:—

"The burden of proving that the statements contained in an article are false lies on the petitioner. Where the petition is based on the ground that false allegations have been made in relation to the conduct of the petitioner as a candidate which amount to corrupt practice, the petitioner should deny on oath the truth of the allegations made against him and his failure to do so may give rise to a presumption against him."

In *Sardar Gurbaksh Singh Vs. Gurdial Singh and another*—A.I.R. 1927 P.C. 230, it has been held as follows:—

"The practice of not calling the party as witness with a view to force the other party to call him, and so suffer the discomfiture of having him treated as his (the other party's) own witness is a bad and degrading practice, 32 Alld. 104 (P.C.) Ref. The true object to be achieved Court of justice can only be furthered with propriety by the testimony of the party who personally knowing the whole circumstances of the case can dispel the suspicions attaching to it. The story can then be subjected in all its particulars to cross-examination".

See also A.I.R. 1954 Patna 280

A.I.R. 1957 Allahabad 346.

In *Karnal Distillery Co. Ltd. and others V. Ladli Parshad Jaiswal and another*—A.I.R. 1958 Punjab 190, it has been held as follows:—

"It is the bounden duty of a party personally knowing the facts and circumstances of the case, to give evidence, and to submit to cross-examination. Courts have rightly drawn a presumption against the party avoiding the witness-box, and not submitting himself to cross-examination. The party who does not enter the witness-box runs a great risk of a presumption being drawn against him."

47. The petitioner has examined Respondent No. 2 Maharaj Singh Bharti (P.W. 15). He has stated in his examination-in-chief that all the statements given out by Mittal (meaning Mam Chand) in his newspaper were all false relating to his personal character and conduct. He has further stated that the allegations of his having embezzled school money during his Managership of the School were all false. (See paras 5 and 6 of his deposition).

He has admitted that he was Manager of the Mahatma Gandhi Smarak Higher Secondary School, Arnawali from 1954 till 5th January 1958, except that he did not do any work in the School in July 1957, as he was in Jail then.

48. The impugned article in the MAIRASHTRA dated 18th February 1962 (Ex. P. 2) was published under the caption "SAMAJWAD KE NAM PAR BHRASHTA-CHAR KA KHULA SHADYANTRA—MAHARAJ SINGH BHARTI KE KALE KARNAMON KA BHANDAPHOR".

Besides, reproducing a portion of the Audit Report of 1957-58, the article mentions [that Maharaj Singh Bharti has embezzled school funds and misappropriated building materials of the school for his own use or sold them in black-market].

- (1) The first item is regarding 36 cart-loads of coal, 400 bags of cement, sold in the black-market belonging to the School and embezzlement of an amount of Rs. 9,386/- utilised from subscription by Respondent No. 2. It is alleged that the cement was utilised by Respondent No. 2 for the construction of his house.
- (2) The second item is regarding embezzlement of the Government grant given to the School.

- (3) The third item is in respect of the embezzlement of Rs. 1,400/- Rs. 500/-, Rs. 89/12/9 and Rs. 80/3/-.
- (4) The fourth item is in respect of gift of lands to the School of which Respondent No. 2 had promised to give 9½ bighas land and one room to the institution. Ultimately, he gave only 2 bighas land but all the income therefrom is alleged to have been misappropriated by him.

49. Maharaj Singh Bharti (P.W. 15) was cross-examined at length in respect of the transactions pertaining to the School (Mahatma Gandhi Smarak Higher Secondary School Arnawali) during his Managership from the year 1954 till 5th January 1957. Details of his statement relevant for the determination of this issue are contained in paragraphs 25 to 53 of his cross-examination.

50. In paragraph 25 of his cross-examination, Maharaj Singh Bharti (P.W. 15) refers to an endowment of 32 acres of his land made by him to the School. He says that this document was registered in 1951, of which he is the sole executant. This document has not been produced (see also para. 3 of the Audit Report Ex. R.1). He says that he does not know whether the name of the School was mutated in respect of these lands in the Revenue papers, but maintains that compensation for this land was entered in the name of the School after the abolition of Zamindari, and still feigns ignorance whether the School authorities are in possession of this land.

In para. 26, he admits that these lands were in possession of tenants even at the time of endowment and he had to recover rent from these tenants. He could not say if the School received the rent of the land in any year. He had to admit that during the period of his Managership, no income of this land was entered in the account-books of the School. He further says that after the abolition of Zamindari the compensation bonds were returned in the name of the School, but could not say whether the instalments in respect of the compensation of these lands were realised by the Executive Committee during his Managership. He did not even care to see the compensation bonds during his Managership nor did he try to find out in whose possession they were. From his evasive replies, the only inference that can be drawn is that the endowment, if at all, to the School was in name only and he misappropriated the income thereof during his Managership.

51. He has asserted that he did not construct any part of the School building during his Managership but in this he is contradicted by Bhagirath Singh (P.W. 11), a witness examined by the petitioner. Bhagirath Singh (P.W. 11) has stated that Respondent No. 2 got the building of the School constructed. Respondent No. 2 is obviously telling lies when he says that he did not construct any part of the School building during his Managership.

52. He admits that coal-dust was indented for the School, but he could not say the quantity. At first, he evaded the question whether he had made any application for the coal-dust, but when he was confronted with the application (Ex. R. 16), he had to admit that it bears his signature, and that coal-dust was requisitioned for building purposes.

He had to admit that another application for coal-dust for a period January to June 1955 for the construction was made (*Vide* Ex. R. 17). He says that the School had no brick-kiln and the estimate for the construction was for 50 lakhs of bricks. He says that coal-dust was given to other brick-kiln owners for purchasing bricks from them. It will be clear from Ex. R. 16 (Photostat copy) that the estimate for construction was in respect of 12 class-rooms, Teachers' quarters, 20 rooms of Hostels, one Hall. In Ex. R. 17 (Photostat copy) the estimate was for 10 class rooms, 10 quarters and one Hall. The total estimate for construction was of 24 class rooms, 10 quarters, 20 rooms for Hostel and 2 Halls for which the coal-dust mentioned in these two applications was required.

Maharaj Singh Bharti has stated that when he took over charge, the Principal's residence and the hostel were complete and during his Managership only 3 rooms and 2 rooms without roofs were completed. There is no explanation as to what happened to the coal-dust for so many rooms and building specified in Ex. R. 16 and R. 17. He admits that it was his duty to make enquiry.

53. In para 48 of his cross-examination, he admits that cement for the construction of the building was received. When questioned about the quantity of cement received, he gives an evasive reply. He could not say if the committee received 22 tons of cement during his Managership in 1955-56.

54. In para 45 of his cross-examination, he admits that during his Managership, the total subscription for the School was from collections from 'Swang' which amounted to Rs. 8,000/-; about Rs. 1,500/- to Rs. 2,000/- were the expenses. No explanation has been given by him as to what happened to this amount received from the 'Swang'. Though he admits that the subscriptions obtained from the 'Swang' must have been registered in the cash-book of the year 1954-55, he could not say if the Government auditors had access to this cash-book, neither could he say whether the auditors were able to scrutinise the cash-book for the purpose of audit. When he was confronted with para 5 of the Audit Report (Ex. R. 1) he stated that it refers to the account of the year 1955-56 and 1956-57. These account books have not been produced for audit. They were of the years during which Maharaj Singh Bharti was the Manager of the School. According to the Audit Report, misappropriation and embezzlement was evident. In the account book and the cash-book a nil opening balance was shown in November 1956. Maharaj Singh Bharti (P.W. 15) attempted to avoid his responsibility by saying that it was by a resolution of the Committee, which authorised the opening of the new account, as there was a new Principal and Manager. There is no truth in the above explanation as Respondent No. 2 was continuing as Manager. No proceeding book of the School has been filed in support of this explanation. The remark in the audit report is correct. Relevant portion from para 5(b) of the Audit Report (Ex. R. 1) was published in the MAIRASHTRA dated 18th February 1962 (Ex. P. 2).

55. Respondent No. 2 in para 39 of his cross-examination has admitted that he signed the receipt dated 8th March 1956 for Rs. 400/- for selling his 'Rahat' to the School. This amount he received from the Agricultural Extension Committee of the School. Direct question was put to him in respect of the receipt of the sum of Rs. 400/- for the 'Rahat' and Rs. 500/- for the bullocks. He gave evasive replies. He could not say if these amounts were received as Government grant during his Managership.

From the photostat of the receipt dated 8th March 1956 (Ex. R. 11), it is clear that Maharaj Singh Bharti Respondent No. 2 received the sum of Rs. 400/- for the Rahat. It is also clear from the letter (Ex. R. 15), the date of which has been scored out, that bullocks were purchased out of the grant received from the District Inspector's Schools office Meerut. The bullocks were purchased from a member of the Management Committee of the School, but were allowed to remain in his possession. The reason given was that there was no proper arrangement of keeping the bullocks in the School. But when the Extension guide visited the School, neither the bullock nor the 'Rahat' were found at the farm (See report Ex. R. 5).

It can safely be inferred from the above that Maharaj Singh Bharti Respondent No. 2 misappropriated the grant of Rs. 400 for 'Rahat' and Rs. 500 for the bullocks though, in fact, the 'Rahat' and the bullocks were not handed over to the School.

56. Maharaj Singh Bharti, in para 53 of his cross-examination refers to the income from 9½ Bigha of land which he says he had gifted to the School.

The caption 'Nimlikhit sajjano ne bhumī Dan ki' from MAIRASHTRA dated 18th February, 1962, was shown to the witness. He admits that this was from a portion of a booklet which has been published containing the list of subscribers who subscribed through 'Swang'. He says that it was wrongly stated that the three persons including himself had made a gift of land on that occasion. According to him, only an announcement was made. This book was distributed to the public. There is evidence to show that 9½ Bighas of land were gifted by Respondent No. 2. The income from this land has not been specifically shown in the accounts.

57. The Audit Report in para 5 indicates that there has been embezzlement during the Managership of Respondent No. 2 Fictitious payments made for the construction of the building during the Managership of Respondent No. 2 have been shown. The allegation in the impugned article (Annexure B) about Rs. 1,400, Rs. 900 and Rs. 500 has been further substantiated by para 5(h) of the Audit Report, which mentions that these sums were shown in cash-book as having been paid to Nidhan Singh. Respondent No. 2 has made a futile attempt to explain away these entries in para 38 and 39 of his cross-examination. There is no manner of doubt that the entries in respect of the above sums are fictitious.

58. Photostat copies of account books have been filed on behalf of Respondent No. 1. The originals were produced by the C.I.D. Inspector, Sri R. S. Dantre (R.W. 1) who is investigating the case of misappropriation of the School funds by Maharaj Singh Bharti and others.

Photostat copies of the Register "Dainik Rokars and maintenance account containing entries for the years 1955, 1956 and 1957 (Exs. R. 6 to Ex. R. 10, R. 12 to R. 14) have been filed in this case. The entries in this register show large number of interpolations and cancellations.

59. Respondent No. 2 in his cross-examination was shown the cash-book beginning from 21st November 1956 to 15th March 1958. Question about his signatures appearing on various pages of this cash-book was put to him. He gave evasive replies when he was asked to identify his signatures on the various pages of this cash-book. (See paras 36, 37, 38 of his deposition).

* The Government aid to this School was stopped by the Director of Education. The reason for stopping the aid was nonavailability of the record of the accounts for the years 1955-56 and 1956-57. This fact is admitted by the petitioner himself (Para 24 of his deposition). The accounts mentioned above were for the period of the Managership of Respondent No. 2.

It is obvious that he is reluctant to admit his signatures. He knows he is to face a prosecution as investigation is being made by C.I.D. against him and others in respect of the embezzlement of the School funds of Mahatma Gandhi Smarak Higher Secondary School, Arnawali.

It has been established from the Audit Report (Ex. R. 1) as well as from the cross-examination of Moharaj Singh Bharti Respondent No. 2 (P.W. 15) that there is a *prima facie* case of embezzlement of School funds against him, as alleged in the article published in MAIRASHTRA dated 18th February, 1962. There was sufficient material for the Editor of MAIRASHTRA *viz.* Mam Chand Mittal for believing that those allegations were true. Under the above circumstances also, the charge of corrupt practice under section 123(4) of the Representation of People Act fails in toto.

60. Issue No. 2(b).—This issue is based on the allegations made in para 12(c) of the petition. The petitioner (P.W. 13) has admitted that these averments were not in his personal knowledge. No evidence has been led on this issue. Besides, there is nothing on record to support the alleged distribution. The finding on this issue is in the negative.

61. Issue No. 2(c).—Petitioner has not adduced any evidence to substantiate the allegations of the first part of para 12(c) of his petition, namely distribution in a procession of congress in Sadar and Lalkurti localities of Meerut on 18th February, 1962.

In the second part of this paragraph it is alleged that this issue was also distributed *inter alia*, in the various Hindu Mohallas of Meerut City and Cantonment mentioned in Schedule B by Mam Chand, and Subhas Agarwal, Rakesh Mohan, Bhagwat Azad and others.

NOTE.—The Mohallas mentioned in Schedule B as well as the names of the distributors have been added in the original petition after amendment.

62. Evidence has been led in respect of distribution in Dalampara locality only.

Shyam Lal Jain (P.W. 14) in para 5 of his examination-in-chief has stated that 4 or 5 days before the poll (polling was held on 23rd February, 1962), when he was going on his way to Kambo Gate, he passed through Mohalla Dalampara. He saw one Rakesh Mohan, worker of the Youth Congress Committee distributing newspapers to people. He gave one copy of the newspaper to him. It was MAIRASHTRA and as far as he remembers it was dated 18th February, 1962. He read this newspaper in which there was an article alleging false statement against the personal character and conduct of Maharaj Singh Bharti as well as an article by MAKRAND. He, however, admits in his cross-examination that these articles had no adverse effect on him, as he knew Maharaj Singh Bharti that he was a honest person and Mam Chand Mittal and company were merely creating election stunt against him and nothing more.

The petitioner has not examined any other witness on this issue. No reliance can be placed on the uncorroborated testimony of P.W. 14. He is an interested witness. He admits, that he supported Respondent No. 2 in the last general election. It is obvious that he has been tutored and set up to depose in favour of the petitioner.

63. Gouri Shanker (R.W. 24) knows Rakesh Mohan. He says that he worked for Prakashwati Sood. Hardit Singh (R.W. 26) also knows Rakesh Mohan. He says that Rakesh Mohan did not work for Sri Shah Nawaz Khan during the election. He was formerly a Jan Sangh member and during election he worked for

Prakashwati Sood. Shyam Lal Jain (P.W. 14) claims to know Sri Shah Nawaz Khan Respondent No. 1 since 1945 since the I.N.A. trial at Delhi. Sri Shah Nawaz Khan, Sri Saigal and Sri Dillon were jointly tried in the Red Fort in Delhi.

He says that he worked as a typist in the I.N.A. trial for the defence committee at Delhi and in the Red Fort he had occasion to meet and talk with all the three persons including Sri Shah Nawaz Khan. This has been satisfactorily rebutted by Sri Shah Nawaz Khan in a reply to a question put to him in his cross-examination. He says that during the I.N.A. trial, he and the other accused were not allowed to talk to any body except the defence counsel. He is definite that he never met or had any talk with Shyam Lal Jain (P.W. 14) during the trial and to this day he has not seen him. Shyam Lal is evidently telling lies about his acquaintance with Sri Shah Nawaz Khan Respondent No. 1, or distribution of MAIRASHTRA.

Petitioner has failed to prove that copies of MAIRASHTRA were distributed in the various Hindu Mohallas of Meerut City and Meerut Cantonment.

64. Issue Nos. 2(d) and 2(e).—Petitioner has led no evidence to substantiate the allegations covered by these issues.

65. Issue Nos. 3(a) and 3(b).—It is alleged in para 12(e) of the petition that Respondent No. 1 through his agents and supporters Mam Chand and Subhas Agarwal (these names were added after amendment) got the first page of the above said daily MAIRASHTRA with some other matter regarding Respondent No. 2 reprinted in large number on 19th February, 1962. The contents of the reprints are attached with the petition as Annexure C. It is alleged that the original issue of MAIRASHTRA and the reprints were issued as pamphlets by Respondent No. 1, and he got the above reprints and the original issue of the MAIRASHTRA distributed in various villages of the constituency in Meerut City and Meerut Cantonment. A brief statement and particulars of some of the villages where Respondent No. 1 got the above said pamphlet or reprint distributed between 18th February and 22nd February 1962 are given in Schedule C.

66. The daily normal issue of MAIRASHTRA dated 18th February 1962 is Ex. P. 2 According to the petitioner, the MAIRASHTRA dated 20th February 1962 Issue No. 42 (Ex. P. 1 and P. 3) and Issue No. 43 (Ex. P. 4) are the reprints of MAIRASHTRA dated 18th February 1962 (Ex. P. 2). There is no direct evidence on record to show that the copies of MAIRASHTRA (Ex. P. 1, P. 3 and P. 4) were reprinted by Mam Chand (R.W. 31) at the instance of or with the consent of Respondent No. 1.

67. It was contended on behalf of the petitioner that there are discrepancies in Ex. P. 1, P. 3 and P. 4 vis-a-vis the MAIRASHTRA dated 18th February 1962 (Ex. P. 2), which go to show that Ex. P. 1, P. 3 and P. 4 are reprints. These discrepancies are as follows:—

In Ex. P. 1, P. 3 and P. 4, the name of the Editor and Printer is missing. Further that on the reverse of Ex. P. 1, there is a misprint of the word "Pedh" which has been subsequently corrected in Ex. P. 3 and P. 4. Further that photographs of Sarvshri Jagdish Saran Rastogi, Shah Nawaz Khan, Kailash Prasad and Kamla Chowdhury have been printed on the reverse of Ex. P. 1, while in Ex. P. 3 and P. 4, the space in which the photograph of Kamla Chowdhury was printed is left blank.

It was urged on behalf of the petitioner that the above discrepancies in the printing and the reprinting of identical news items and articles in the MAIRASHTRA (Ex. P. 1, P. 3 and P. 4) dated 20th February, 1962 supports his contention that these copies of MAIRASHTRA were reprints of the original i.e. MAIRASHTRA dated 18th February, 1962 (Ex. P. 2).

Petitioner (P.W. 13) deposed that no one gave him the information about the reprints as alleged by him in para 12(e) of the petition. He says that it was merely an inference drawn from the discrepancies and identical news mentioned above. He also states that there was a normal issue of MAIRASHTRA dated 20th February 1962 and that he had seen the normal issue and it was different from Ex. P. 1, P. 3 and P. 4. He made no attempts to obtain the normal issue of MAIRASHTRA dated 20th February 1962 nor did he file it.

68. Mam Chand (R.W. 31) who is the Editor of MAIRASHTRA has given plausible explanation how the abovementioned discrepancies have appeared in the MAIRASHTRA dated 20th February, 1962 (Ex. P. 1, P. 3 and P. 4). He asserts that these copies of MAIRASHTRA (Ex. P. 1, P. 3 and P. 4) are normal issue of the MAIRASHTRA daily issued on 20th February, 1962. Under the circumstances, it was incumbent on the petitioner to prove that there was a normal issue of

MAIRASHTRA on 20th February 1962 and that it was different from Ex. P. 1, P. 3 and P. 4.

The fact that these issues of MAIRASHTRA Ex. P. 1, P. 3 and P. 4 contained the same matter as was published in the first page of the MAIRASHTRA dated 18th February 1962 (Ex. P. 2) does not by itself indicate that the MAIRASHTRA dated 20th February 1962 (Ex. P. 1, P. 3 and P. 4) were reprints of the MAIRASHTRA dated 18th February 1962 (Ex. P. 2).

For the matter of that identical news items was also printed in the MAIRASHTRA dated 15th January 1962 (Ex. P. 18) and dated 16th January 1962 (Ex. P. 19) on page 2.

It cannot be said by any stretch of imagination that the MAIRASHTRA dated 16th January, 1962 (Ex. P. 19) was a reprint of the MAIRASHTRA dated 15th January 1962 (Ex. P. 18). Mam Chand (R.W. 31) has stated that the MAIRASHTRA dated 20th February, 1962 (Ex. P. 1) was published for the benefit of the public (*vide* para 9).

The petitioner has failed to show that Ex. P. 1, P. 3, P. 4 were reprints of MAIRASHTRA (Ex. P. 2).

69. [The petitioner in para 12(e) of the election petition did not mention the names of Mam Chand and Subhas Agarwal through whom Respondent No. 1 is alleged to have got the MAIRASHTRA dated 18th February, 1962, reprinted.] It is obviously an after-thought. I have already held in issue No. 1(a) that Mam Chand and Subhas Agarwal were not agents and supporters of Respondent No. 1. Petitioner has failed to adduce evidence to show that the MAIRASHTRA dated 20th February, 1962, was a reprint or was distributed with the consent of Respondent No. 1. There is no evidence also to show that the issue of MAIRASHTRA dated 20th February, 1962, was printed as an election pamphlet of Respondent No. 1.

70. *Issue No. 3(c).*—This issue is based on the allegation in para 12(e) of the election petition. The names of the alleged agents of Respondent No. 1 who are said to have distributed the MAIRASHTRA in various villages have been mentioned in Schedule C attached to the petition.

In Schedule C names of 89 villages have been mentioned, in which the petitioner alleges the copies of MAIRASHTRA were distributed on 19th and 20th February 1962 respectively by the agents of Respondent No. 1. The names of 48 agents are given in column 1 of the Schedule. The villages in which these agents are alleged to have distributed the MAIRASHTRA respectively have been shown in column 2. The brackets in the Schedule have been typed to show the names of agents who distributed the MAIRASHTRA in various villages.

71. The petitioner has led evidence in respect of the distribution in 11 villages out of a total of 89 villages mentioned in Schedule C.

Before proceeding to consider the evidence of the witnesses examined by the petitioner on this issue, it is necessary to interpret the significance of the brackets appearing in Schedule C for ascertaining which of the agents distributed the MAIRASHTRA in which of the villages. The contention of Respondent No. 1 is that Schedule C gives the name of the distributor and opposite to it the name of the village in which the distribution was made. For example, name of Ghisa of Arnawali has been typed in the same line as the village Arnawali in item No. 1. It should, therefore, be read that Ghisa distributed the MAIRASHTRA in village Arnawali and in no other villages.

The contention of the petitioner is that name of (1) Ghisa as well as (2) of Hoshlar Singh have been mentioned against three villages Arnawali, Jijonkhar and Ghasoli, as shown by the brackets and it should be construed that both the persons named above distributed the copies of MAIRASHTRA in the three villages mentioned against their names.

72. Petitioner has no personal knowledge about the distribution of MAIRASHTRA in the villages. He has led evidence in respect of distribution in villages Arnawali (item No. 1) Rasna (item No. 8), Lahoregarh (item No. 10), Badora (item No. 13), Dhadra (item No. 14), Bhatipura (item No. 19), Sandan (item No. 26), Tigri (item No. 28), Khanpur (item No. 33), Nangla Jamalpur (item No. 36), Bafar (item No. 38) all in Schedule C

VILLAGE ARNAWALI.

73. Distribution in village Arnawali is alleged to have been made by Ghisa of that village. Bhagirath Singh (P.W. 11) stated that Hoshiar Singh of village Jijonkhar and Ghisa of Arnawali were working for Respondent No. 1. In para 4 of his examination-in-chief he says that Hoshiar Singh was on a cycle when he was distributing the MAIRASHTRA. More than 20 papers were distributed in his presence. He does not say that both Ghisa and Hoshiar Singh distributed the paper in village Arnawali, although according to Schedule C, both Ghisa and Hoshiar Singh distributed the MAIRASHTRA in that village.

It follows that Bhagirath does not really know about distribution although he says that he saw only Hoshiar Singh distributing the MAIRASHTRA on a cycle. He is certain that the MAIRASHTRA was distributed only one day in village Arnawali while in Schedule C it is alleged that it was distributed on the 19th as well as on the 20th February 1962. In his cross-examination he admits that he did not make a note when MAIRASHTRA was distributed, but says he just remembers about it. He admits that leaflets were distributed in the village Arnawali since some fifteen days before the polling, but he could not say which paper on behalf of which party in support of which candidate and on what dates the leaflets were distributed in Arnawali. It is strange that he could remember about distribution of MAIRASHTRA only.

Bhagirath Singh (P.W. 11) is evidently a tutored witness and no reliance can be placed on his uncorroborated testimony.

74. Lakshmi Narain (R.W. 28) is a Sarpanch and Zamindar of village Arnawali. He says that he did not work for Sri Shah Nawaz Khan Respondent No. 1. He knows Hoshiar Singh of village Jijonkhar. He says that Ghisa and Hoshiar Singh did not distribute any issue of MAIRASHTRA on behalf of Shah Nawaz Khan in the last general election in Arnawali.

Sheo Swarup Sharma (R.W. 29) who was the principal of Mahatma Gandhi Smarak Higher Secondary School Arnawali also says that no issue of MAIRASHTRA was distributed in village Arnawali on behalf of Sri Shah Nawaz Khan in the last general election.

I see no reason to disbelieve the abovenamed witnesses examined by Respondent No. 1. The petitioner has failed to show that copies of MAIRASHTRA were distributed in village Arnawali by any worker of Respondent No. 1.

VILLAGE RASNA.

75. Koorey Singh (P.W. 7) has stated that Bishambhar Tyagi and Om Prakash Tyagi had distributed the MAIRASHTRA in the village Rasna. According to Schedule C, four persons (items 8 to 11 of Schedule C) have been named as agents of Respondent No. 1 who are alleged to have distributed the MAIRASHTRA in villages Rasna, Narangpur, Lahoregarh, Kaithwari and Kanoni. Thus, according to the petitioner, all these four persons distributed the MAIRASHTRA in each and every village named against the brackets. But Koorey Singh (P.W. 7) names only two persons, viz. Om Prakash Tyagi and Bishambhar Tyagi, who distributed the MAIRASHTRA. There is thus a glaring contradiction in his evidence.

Baljit Singh (R.W. 5) of village Rasna and Bishambhar Sahai (R.W. 6) of village Kaithwari and Om Prakash Tyagi of village Rasna (R.W. 7) have rebutted the evidence of Koorey Singh (P.W. 7).

Baljit Singh (R.W. 5) is a Sarpanch of village Rasna. He is an independent witness. He is not a member of the congress. He knows Koorey Singh (P.W. 7). He says that no newspaper such as Ex. P. 1 and P. 2 was distributed in his village on behalf of Sri Shah Nawaz Khan.

Bishambar Sahai (R. W. 6) and Om Prakash Tyagi (R.W. 7) of village Rasna have denied that they distributed any issue of MAIRASHTRA from any tractor in Rasna or Lahoregarh on behalf of Sri Shah Nawaz Khan during the last election.

Evidence of Koorey Singh (P.W. 7) about the alleged distribution MAIRASHTRA in village Rasna has been satisfactorily rebutted by Respondent No. 1's witnesses Baljit Singh (R.W. 5), Bishambhar Sahai (R.W. 6) and Om Prakash Tyagi (R.W. 7). The allegation of distribution of MAIRASHTRA in village Rasna has not been substantiated by the petitioner.

VILLAGE LAHOREGARH.

76. Jagat Singh (P.W. 10) says that Om Prakash was distributing the newspaper in village Lahoregarh from a tractor. Bishambhar Sahai and some other persons were sitting in the tractor. He does not say that Bishambhar Sahai also distributed the MAIRASHTRA. He says that Bishambhar Sahai was speaking from a loudspeaker announcing about the misdeeds of Maharaj Singh Bharti.

It is not pleaded that any announcement was made by any agent of Respondent No. 1 during the alleged distribution of MAIRASHTRA. P.W. 10 does not say that Mangal Sen and Chhatar Sen also distributed the MAIRASHTRA although in Schedule C the names of all the four persons Mangal Sen, Om Prakash, Chhatar Sen and Bishambhar Sahai are mentioned. Both Bishambhar Sahai (R.W. 6) and Om Prakash Tyagi (R.W. 7) have denied that they distributed the MAIRASHTRA in village Lahoregarh. They are corroborated by Mangal Sen (R.W. 8).

Jagat Singh (P. W. 10) is a tutored witness and no reliance can be placed on his evidence. Petitioner has failed to prove the distribution of MAIRASHTRA in village Lahoregarh.

VILLAGE BADORA

77. Jahan Singh (P.W. 9) stated that Amar Singh was distributing the MAIRASHTRA in village Badora on behalf of Sri Shah Nawaz Khan one day before the election. In his cross-examination, he names large number of persons of the village who had collected at the time of the distribution. None of these witnesses have been examined to corroborate Jahan Singh (P.W. 9). He does not say that Ved Prakash also distributed the MAIRASHTRA, although the name of Ved Prakash is mentioned in Schedule C in respect of the distribution in village Badora also. His evidence is rebutted by Mam Singh (R.W. 9) who says that Amar Singh did not work for Respondent No. 1 in Badora. Amar Singh is a practising lawyer at Meerut. Ved Prakash (R.W. 10) denies distribution of MAIRASHTRA by Amar Singh in this village.

Ved Prakash (R.W. 10) knows Jahan Singh (P.W. 9) and says that Amar Singh worked for Maharaj Singh Bharti during the last election.

Jahan Singh (P.W. 9) is a partisan witness and it will not be safe to accept his uncorroborated testimony. Petitioner has failed to adduce satisfactory evidence to prove the distribution of MAIRASHTRA in village Badora.

VILLAGE DHADRA

78. Ved Singh (P.W. 3) is a resident of village Dhadra. He says that on 20th February 1962 MAIRASHTRA was distributed in village Dhadra at about 10 or 11 a.m. by one Buddhu alias Budh Sen of village Marhi who is alleged to be a congress man. According to him, Buddhu was distributing the newspaper from a Rickshaw. He had a mike in his hand and a congress flag was there. He read the paper and says that it contained allegations of misappropriation and selling of cement in black market by Respondent No. 2. He complained about it to Hari Raj Singh (petitioner).

In his cross-examination, he says that in spite of the allegation he had voted for Maharaj Singh Bharti. He was asked to do so by Hari Raj Singh. He admits in his cross-examination that he was a student of the Rasna Inter College where Hari Raj Singh is a teacher. He is obviously under the influence of Hari Raj Singh and has come to support him. His evidence is rebutted by Budh Sen (R.W. 2) who denied distribution of MAIRASHTRA. Mool Chand (R.W. 3) who is a resident of Dhadra also denies distribution of MAIRASHTRA in the village. In his cross-examination he was asked whether loudspeaker was used for the purpose of canvassing during the election. He says he did not hear any loudspeaker in the village Dhadra.

The evidence of uncorroborated testimony of Ved Singh (P.W. 3) has been satisfactorily rebutted by Budh Sen (R.W. 2) and Mool Chand (R.W. 3). Petitioner has failed to substantiate his allegations for distribution of the paper MAIRASHTRA in village Dhadra.

VILLAGE BHATIPURA

79. Bhikam Singh (P.W. 5) is a resident of village Bhatipura. He says that one day before the election MAIRASHTRA newspaper was distributed in his village. He had read the paper. It was written in it that Maharaj Singh Bharti had misappropriated money and sold cement and coal belonging to a School. He

further says that Chhotey Singh of village Seolda distributed this paper in his village. He then changes and says that Chhotey Singh was sitting in his tractor with a congress flag and Bal Makund was distributing the copy of MAIRASHTRA. Many people had collected round the tractor when the papers were being distributed. None of them have been examined to corroborate him.

Chhotey Singh (R.W. 11) says that he did not distribute any such paper in Bhatipura. He is corroborated by Bal Makund (R.W. 14). He says that no MAIRASHTRA was distributed by Chhotey Singh. He knows Bhikam Singh (P.W. 5) and says that he worked for Maharaj Singh Bharti in the last general election. Name of Chhotey Singh is not mentioned in Schedule C in respect of the distribution of MAIRASHTRA in Bhatipura. Bhikam Singh (P.W. 5) is evidently an interested witness. His evidence remains uncorroborated and does not merit any credence. I disbelieve him and hold that no copy of MAIRASHTRA newspaper was distributed in village Bhatipura.

VILLAGE SANDAN

80. Harbans Singh (P.W. 6) is a resident of village Sandan. He says that on behalf of Congress a paper known as MAIRASHTRA was distributed one or two days before the date of poll in his village. He had read the paper and it stated about misappropriation of money and cement by Maharaj Singh Bharti. According to him, this distribution was done by Narain Singh from a Rickshaw and he was also speaking from a loudspeaker. In his cross-examination he admits that papers were distributed on behalf of other candidates also, but he does not remember the names of those persons who distributed the papers of other candidates, nor does he remember the contents of those papers. He has been evidently tutored to say about distribution of MAIRASHTRA.

Narain Singh (R.W. 17) denies that he distributed any paper in village Sandan. Raj Singh (R.W. 18) corroborated him. Narain Singh (R.W. 17) further says that about 40 persons worked with him for the congress in the last election. He did not work for Sri Shah Nawaz Khan but he worked for Mool Chand Shastri in Baraut constituency. I see no reason to disbelieve Narain Singh (R.W. 17) and Raj Singh (R.W. 18).

Evidence of Harbans Singh (P.W. 6) about distribution of MAIRASHTRA has been satisfactorily rebutted by Respondent No. 1's witnesses. Petitioner has failed to substantiate his allegations about the distribution of MAIRASHTRA in village Sandan.

VILLAGE TIGRI

81. Jagpal Singh (P.W. 4) states that Jai Pal Singh and Nawab Singh of Kheri were working for Sri Shah Nawaz Khan in village Tigri and on 21st February 1962 a copy of MAIRASHTRA was distributed by Jaipal Singh in his village. He does not name Nawab Singh of Kheri as a co-worker with him at the time of distribution although Nawab Singh's name appears in Schedule C in respect of the alleged distribution in village Tigri.

In his cross-examination, he says that he remembers the date as he maintains a diary and he has noted the date of distribution of leaflets in his diary. The date of distribution in Schedule C in Tigri is 20th February 1962 but Jagpal (P.W. 4) says MAIRASHTRA was distributed on 21st February 1962. He stands contradicted by the particulars given in Schedule C.

Nawab Singh (R.W. 15) and Mahipal Singh (R.W. 16) have denied the distribution of MAIRASHTRA in village Tigri. Mahipal Singh (R.W. 16) further says that there was no person by name of Jaipal Singh in village Tigri who worked for Respondent No. 1. Evidence of Jagpal Singh (P.W. 4) has not been corroborated by any other witness. I am unable to accept his evidence which has been satisfactorily rebutted by Respondent No. 1's witnesses. Distribution of MAIRASHTRA in village Tigri has not been proved.

VILLAGE KHANPUR.

82. Ganga Saran (P.W. 8) has stated that Balak Ram of village Maipa distributed MAIRASHTRA from a Rickshaw, which was fitted with a loudspeaker. In Schedule C Arjun Devi of Timakia and Kallo of Siwal are also mentioned in respect of distribution of MAIRASHTRA in village Khanpur and 9 other villages of Meerut Rural Assembly constituency. Ganga Saran (P.W. 8) does not say that Arjun Devi and Kallo also distributed the MAIRASHTRA in Khanpur. His

evidence is thus contradicted by the particulars given in Schedule C. He was polling agent for Respondent No. 2 and has been evidently tutored to support the petitioner.

Balak Ram (R.W. 4) has denied that he distributed the MAIRASHTRA in Khanpur. No reliance can be placed on the evidence of Ganga Saran (P.W. 8). Distribution of MAIRASHTRA in village Khanpur is not proved.

VILLAGE NANGLA JAMALPUR

83. Gyan Chand (P.W. 1) says that one day before the election some congress men came in a jeep car with congress flags flying on the same and they distributed some paper. Bhulley Singh was the person who was distributing the paper. This paper which was being distributed was MAIRASHTRA dated 20th February 1962. In his cross-examination he says that there were two or three persons with Bhulley Singh in the Jeep. Amongst him, he recognised Padam Singh of Jani. His evidence is rebutted by Bhule Singh (R.W. 19) and Padam Singh (R.W. 20). They say they did not distribute any MAIRASHTRA in the village Nangla Jamalpur. Babu Ram (R.W. 21) who is a resident of this very village denies distribution of MAIRASHTRA there. He is an independent witness and I see no reason to disbelieve him. According to Gyan Chand (P.W. 1) the village comprises of 400 adult persons, out of whom 300 persons cast their votes in favour of Respondent No. 2. This makes it extremely unlikely that any distribution of MAIRASHTRA with this article alleging misappropriation on the part of Maharaj Singh Bharti would have been distributed in this village. The uncorroborated evidence of Gyan Chand (P.W. 1) is not convincing. Petitioner has failed to substantiate his allegation of distribution of MAIRASHTRA in village Nangla Jamalpur.

VILLAGE BAFAR

84. Harbir Singh (P.W. 2) is a resident of village Bafar. He says that one day before the Poll, MAIRASHTRA was distributed by Bhulley Singh and Padam Singh along with 2 or 3 other persons in this village. According to him, paper was distributed from a jeep car. He read the paper which contained the allegation of misappropriation of money and black-marketing by Maharaj Singh Bharti. In his cross-examination, he says that when the paper was distributed, among the persons present on the spot, he had seen it. It was MAIRASHTRA dated 20th February 1962. He had seen Mohammad Shafi, Ramzani, Gopi Chand Harijan, Husan Singh Harijan, Shiv Charan Maharaj Brahman, Nawab Singh, Om Prakash Pradhan, Baljit Singh, Mahabir Singh and others in possession of the paper after the distribution. None of these witnesses have been examined to corroborate him. When asked in the cross-examination about the Jeep from which MAIRASHTRA was distributed, he could not give its number. He also could not say whether Bhulley Singh and Padam Singh were workers of Sri Shah Nawaz Khan Respondent No. 1.

Bhule Singh (R.W. 19) and Padam Singh (R.W. 20) both have denied distribution of MAIRASHTRA in village Bafar. Harbir Singh (P.W. 2) appears to be a tutored witness and no reliance can be placed on his uncorroborated testimony. Petitioner has failed to prove the distribution of MAIRASHTRA in village Bafar.

I hold that the MAIRASHTRA newspaper dated 18th February 1962 or dated 20th February 1962 were not distributed in the villages mentioned in Schedule C.

85. Issues No. 2(f) and 3(d).—This issue is based on the allegations in paragraph 12(f) of the petition, wherein it is stated that the reprints contained nothing else but false and defamatory statement regarding Respondent No. 2, in relation to his personal character and was an election pamphlet of Respondent No. 1 in the garb of special issues of Daily MAIRASHTRA. It is further alleged that the above said reprints were published and propagated with the full knowledge and belief that the above statements were false and at any rate not true. All this was done with a view to prejudice the election prospects of Respondent No. 2.

There is no allegation in this paragraph that the statement contained in the paper was published by Respondent No. 1 or by his agents with his consent.

It has been held in Issue No. 1(a) that Mam Chand and Subhas Agarwal were not agents or supporters of Respondent No. 1. Mam Chand and Subhas Agarwal are editors and sub-editors of the Local Daily MAIRASHTRA.

The petitioner has failed to prove that the impugned article in the MAIRASHTRA dated 18th February 1962 concerning Respondent No. 2 was published with the consent of Respondent No. 1.

It has been held in *Mathal Mathew Manjuran vs. K. C. Abraham*—10 E.L.R. page 367 at 378 as follows:—

“Where the managing director of a newspaper was the President of the Provincial Congress Committee and the editor and publisher of it was, a prominent Congressman, and the paper was actively canvassing for the Congress through its editorials, reports, circulars and advertisements and receiving donations from the Congress: Held, that these facts were not sufficient to make that newspaper or its editor an agent of the candidate put up by the Congress so as to make the candidate liable for the statements made in that paper.”

In the copy of MAIRASHTRA dated 20th February 1962 (Ex. P. 1, P. 3 and P. 4, the article published on the first page of MAIRASHTRA dated 18th February 1962 (Ex. P. 2) has been reproduced. In this article allegations were made against Respondent No. 2 that he had embezzled the School funds and also misappropriated and sold cement, coal etc. of the School in black-market.

The finding on Issue No. 2(a) is that the statement in the article published in MAIRASHTRA dated 18th February 1962 by Mam Chand (R.W. 31) is not false. In view of this finding also I hold that Respondent No. 1 has not committed any corrupt practice as defined in sub-section (4) of Section 123 of the Representation of People Act. There is no evidence to show that the issues of MAIRASHTRA dated 20th February 1962 were election pamphlet of Respondent No. 1 or any act was done by him to prejudice the election prospects of Respondent No. 2.

86. Issue No. 3(e).—This issue is based on the averments in para 12(g) of the petition. The allegations are that the reprints were distributed with the consent of Respondent No. 1 in the procession of Congress in large numbers on 20th February, 1962, in Meerut City by Sarvashri Mam Chand, Bhagwat Azad, Rakesh Mohan, Shadi Ram Jain, Jayanti Prasad who were his workers and agents. It is also alleged that in this procession Respondent No. 1 personally participated. Allegations in para 12(g) were verified by the petitioner to be true to his personal knowledge.

The petitioner in his cross-examination referred to the allegations in this paragraph wherein an amendment was made by adding the words “with the consent of Respondent No. 1”. He admitted that it was not in his personal knowledge that the reprints were distributed with the consent of Respondent No. 1. The verification was obviously false (See cross-examination para 40).

87. The petitioner is the only witness in respect of this allegation. He says that on 20th February, 1962, he saw the distribution in Gujribazar. He could not say from which place the procession started nor could he say about its termination.

Hakim Saifuddin (R.W. 12), Gouri Shanker (R.W. 24), Hardit Singh (R.W. 26), Shah Nawaz Khan (R.W. 32) have denied distribution of MAIRASHTRA. Shri Shah Nawaz Khan (R.W. 32) admits that he was in the congress procession but denied that Rakesh Mohan and Bhagwat Azad were his workers. He has denied that any copy of MAIRASHTRA was distributed in the Congress procession.

Hakim Saifuddin (R.W. 12) has deposed that 3 days prior to the date of poll of Meerut City a Congress procession was taken out at about 3 p.m. which started from Sharma Memorial building and went through the town. He was present in the procession so also Shri Shah Nawaz Khan. It is definite that no copy of MAIRASHTRA was distributed in that procession (*vide* para 6).

Gouri Shanker (R.W. 24) is a resident of Meerut City. He was accused in the Meerut Conspiracy case. He was under-trial for four years and was convicted for 3 years R.I. in 1933 in that case. He had already joined the Congress in 1920. He had participated in the Congress procession on 20th February, 1962. He denied that any issue of MAIRASHTRA in Hindi was distributed in that procession.

Hardit Singh (R.W. 26) was also present in that procession of 20th February, 1962. He is definite that no newspaper whatsoever was distributed in that procession. He kept changing places in the procession—sometimes he was in the front, sometimes in the middle and rear. They have fully corroborated the

of . . . Shah Nawaz Khan (R.W. 32) that no MAIRASHTRA newspaper was distributed in this procession.

When the petitioner (P.W. 13) could falsely swear his affidavit with relation to the allegations in para 12(a) of the election petition and could make false verification in respect of paras 12(g), 12(h) and 12(j) thereof, he would not hesitate to misrepresent facts to suit his purpose. (See cross-examination of P.W. 13 paras 38 to 40, 42). Under the circumstances, his evidence about the distribution of the MAIRASHTRA on 20th February, 1962, in the Congress procession without any corroboration must be rejected as false.

I hold that no reprints of MAIRASHTRA were distributed in the Congress procession on 20th February, 1962 in Meerut City.

88. Issue No. 3(f).—This issue is based on the allegation made in para 12(h) of the petition. It has been verified by the petitioner to be true to his personal knowledge. In para 3 of his deposition he stated that on 21st February, 1962, at about 8 p.m. a meeting of Congress was held in Gujribazar and copies of MAIRASHTRA (Ex. p. 1) were distributed there. Before it was distributed Mam Chand read out certain portions from this reprint. Sarvashri Shah Nawaz Khan, Jagdish Saran Rastogi and Rakesh Mohan were present in this meeting. He has not examined any witness to corroborate him. His evidence has been satisfactorily rebutted by Hakim Saifuddin (R.W. 12). He has deposed that he is a member of the Municipal Board Meerut from Ward No. 7 constituency. A portion of Gujribazar is included in that constituency. Two or three days before the date of poll he presided over a meeting which was held in Gujribazar at 7 or 8 p.m. Shri Shah Nawaz Khan was not present in that meeting. Shri Shah Nawaz Khan testified that he was not present in that meeting as he was busy with the polling. Hakim Saifuddin (R.W. 12) corroborates him.

Mam Chand (R.W. 31) has denied that he participated in the meeting or distributed any copy of MAIRASHTRA. In the absence of any corroborated evidence, I disbelieve the petitioner when he says that a copy of MAIRASHTRA was distributed at the Congress meeting on 21st February, 1962 or that Mam Chand Mittal (R.W. 31) read out certain portions from this reprint. I further disbelieve him when he says that Shri Shah Nawaz Khan Respondent No. 1 was present in this meeting. Shri Shah Nawaz Khan Respondent No. 1 could not have been present as testified by Hakim Saifuddin (R.W. 12) that he was busy elsewhere it being the polling day for his constituency.

The allegation about distribution of the reprint on 21st February, 1962, in Gujribazar or the presence of Respondent No. 1 there is obviously false. There is no truth in the allegation that Respondent No. 1 participated in the Congress meeting on 21st February, 1962.

89. Issue No. 4(a) and (b).—The petitioner has no personal knowledge about the allegation made in para 12(i) of the petition. He has examined a solitary witness Ashiq Ali (P.W. 12). He is a resident of village Bafar, which is 7 miles from Meerut. He says that he had gone to Meerut on 23rd February, 1962. It was the third day of Ramzan. After visiting some polling stations in Meerut City, he went to Shahi Jamma Masjid at about 1 in the afternoon for prayers. He says that after the prayers it was announced that the people should stay as Hakim Saif Sahib (R.W. 12) will speak to them. He says that Hakim Saif Sahib gave a speech as follows:—

“Mulak men jamhooriyat hai aur jamhooriyat men chungwa ahmiyat rakhte hain aur kahne ko to Hindustan secular state hai lekin pichle Aligarh wo Meerut ke dangon ne yeh soch kar diya hai ki Hindu lok aksariat men hain aur woh ham aksariat walon ko daba kar raub men pahna chahate hain aur hamare jo ek seat Parliament ki hamare pas hai use aaj sab Hindu Mahatma Singh Bharti ke saath hokar aur unhen election men kamyab kar ke chhina chahate hain is liye ham ko bhi apni seat ki hifazat ke liye sab ko mil kar apne hi admi Shah Nawaz Sahib ko vote dena zaroori hai.”

Ashiq Ali (P.W. 12) further says that after Hakim Saif Sahib concluded his speech, Shri Shah Nawaz Khan stood up and said as follows:—

“Jo kuchh Saif Sahib ne kaha hai woh durust hai aur main uski taed karta hoon aur choonki waqt kam hai 4 bajte tak polling khatam ho jaegi main etna kahna chahata hoon ki pichle dangon men jo fasadat se masjid ko nuksan pahuncha hai uske liye sab log dil khol kar chanda den aur main bhi apni nij position men se Mufti Khaliq ko zariye aap ki masjid ki committee ke nam 2200 rupiya bhejne ko

waida karta hoon Aur main pichle dono jummon mein nahin aa saka iske live main chahia hoon ab aam sab log bahut iad apne apne maan mein jakar apni ek ek vote ko koi rah na jao sab vote polling par dalva dijiye unhone ye yeh kahi ki main abhi polling par ho kar aa raha hoon ham logon ki bahut thori voten polling par pahunchi hain. Us ke bad wahan Allah wo akbar ke nare lagne lage. Main wahan se chala aaya."

From his replies in his cross-examination, it is abundantly clear that he is a got-up witness. He is telling lies when he says he attended the Friday prayers at the Jama Masjid on 23rd February, 1962. He is also telling a lie that Hakim Saifuddin gave a speech after the Friday prayer was over or Sri Shah Nawaz Khan Respondent No. 1 supported Saifuddin, or offered the sum of Rs. 2,200 towards the Jama Masjid Fund for damages caused to it.

First of all there is no pleading to the effect that any speech was made by Hakim Saifuddin after the prayers were over or that the speech was supported by Respondent No. 1. Ashiq Ali (P.W. 12) has concocted the story of the speech by Saifuddin, and the support of Respondent No. 1. Ashiq Ali (P.W. 12) was obviously not present at the Jama Masjid on 23rd February, 1962. He says that only one Azan was called on Friday at the Jama Masjid. This was not so. Qazi Zainul Abidin (R.W. 22) who is a Pesh-Imam of that mosque is definite that two Azans were called when the prayer commenced. The first Azan is called at 1 P.M. and the second Azan is called at 1-30 P.M. and after the second Azan 'Khutba' is said in Arabic and thereafter people stand for the farz namaz.

Ashiq Ali (P.W. 12) has no knowledge of the manner in which the Namaz was performed on 23rd February, in Jama Masjid. He has not given any satisfactory explanation why he visited the Jama Masjid, Meerut from Bafar to offer Friday prayer on 23rd February, 1962. When according to Bhuley Singh (R.W. 19) there are mosques in Jani Kalan and Siwal where Juma prayers are offered. Jani Kalan is at a distance of one mile from Bafar and Siwal is about 2 miles from Bafar. These mosques being so near to Bafar, it was not necessary for Ashiq Ali (P.W. 12) to go such a long distance to attend the Friday prayers in Jama Masjid.

Ashiq Ali (P.W. 12) is a highly interested witness and a man of dubious character. He admits that he was a polling agent of Respondent No. 2. He further admits that he was prosecuted for dacoity and he was bound over under section 109 Cr. P.C. but was acquitted. Hakim Saifuddin (R.W. 12) is a respectable person, he is a member of the Municipal Board, Meerut for the last 15 years. He joined the Congress in 1956. He worked for Congress in the last general election and was in charge of the election of Jagdish Saran Rastogi, M.L.A. He is definite that he did not offer prayers in Jama Masjid Meerut on 23rd February, 1962, nor did he go there to deliver any speech.

Shri Shah Nawaz Khan Respondent No. 1 (R.W. 32) has stated in para 18 of his deposition that he went to Jama Masjid on 23rd February, 1962 to offer the Friday prayer. He denied that he made any speech on that occasion nor he made any promise or an offer. Abdul Khalik Mufti (R.W. 13), Qazi Zainul Abidin (R.W. 22), Hakim Shafiq Ahmad (R.W. 23) are respectable witnesses. They testify that Shri Shah Nawaz Khan made no speech nor offered any sum to the Jama Masjid after the prayers were over.

90. Abdul Khalik Mufti (R.W. 13) is a Senior Vice President in the Municipal Board, Meerut. He was present at the Jama Masjid on 23rd February, 1962, where he offered his prayers. He was there from 1 P.M. till 2-30 P.M. He says that Sri Shah Nawaz Khan and Hakim Saifuddin did not deliver any speech in the mosque that day. He did not see Hakim Saifuddin that day in the mosque. He further says that Sri Shah Nawaz Khan did not offer Rs. 2,200 to him for any loss or damage done to the mosque. On the other hand he asserts that during the riots no damage was caused to the building of Jama Masjid. Qazi Zainul Abidin (R.W. 22) was the Pesh Imam who led the prayers on Friday.

Evidence of Abdul Khalik Mufti (R.W. 13) is corroborated by Qazi Zainul Abidin (R.W. 22) & Hakim Shafiq Ahmad (R.W. 23). He led the prayers on Friday on the day of poll in the last general election in Jama Masjid Meerut. He knows Sri Shah Nawaz Khan. He says that Sri Shah Nawaz Khan did not deliver any speech that day. In his cross-examination he affirms that on 23rd February, 1962 there was no meeting of any kind after the Friday prayers in the Jama Masjid. According to him, some subscription were collected on that day, which amounted to about Rs. 100 or Rs. 150. He is definite that no damage was done to the Jama Masjid building. He says that only some 'durries' were damaged by fire but it

did not spread and it was extinguished and no 'durry' was completely burnt. In his cross-examination he affirms that on 23rd February, 1962, Sri Shah Nawaz Khan offered his prayers in the Jama Masjid Meerut. He did not see Hakim Saifuddin (R.W. 12). He further affirms that they did not deliver any speech neither Sri Shah Nawaz Khan offered Rs. 2,200 as subscription for the damages caused to the mosque.

No damage was caused to the Jama Masjid during communal riots. Some damage was caused to the other mosques in Meerut, which fact has been admitted by Respondent No. 2. Who admits that the damages were repaired in November 1961 from the funds of Provincial Congress Committee and that of State Government (See para 9 of the deposition of Respondent No. 2). This being so, the petitioner (P.W. 13)'s allegation that an offer of Rs. 2,200 was made by Respondent No. 1 for repairs of the damages to the Jama Masjid is baseless and mischievous.

91. Sri Shah Nawaz Khan Respondent No. 1 (R.W. 32) related an account of his career since the time he was taken prisoner by the Japanese Army during the Great War and till the time of his trial in the year 1945 in the Red Fort of Delhi for having joined the Indian National Army under Netaji Subhash Chandra Bose and after his release, his active participation in consolidating Hindu Muslim unity. The truth of the account given by him in his evidence (para 2 to 8 of his deposition) has not been challenged in any manner in his cross-examination, nor has it been shown anywhere by the petitioner that there has been a change in his faith in Hindu Muslim unity. With the above back-ground in view, it is difficult to believe that he would have addressed the congregation at the Jama Masjid on 23rd February, 1962 in the manner alleged by the petitioner.

I find the petitioner has failed to substantiate the allegation that Respondent No. 1 addressed the Muslim community on 23rd February, 1962 at the Jama Masjid Meerut to vote for him on ground of religion. The petitioner has also failed to show that after the prayers Respondent No. 1 offered to pay a sum of Rs. 2,200 to the management of Jama Masjid for the alleged loss, destruction or damage done to it during the communal riots. In fact, no damage was done to this mosque.

92. Issue No. 5.—This issue is based on the allegation in para 12(j) of the petition, which has been verified to be true to the personal knowledge of the petitioner. The petitioner's evidence is the only evidence on this issue. In para 7 of his examination-in-chief, he has deposed that on the night of 21st February, 1962, there was a proclamation in Meerut City to the effect that Jats who are of the same community as Maharaj Singh Bharti had beaten members of Jatav at various places. This announcement was made from a Congress car carrying a Congress flag. He heard this announcement from his room in Gurjibazar, where there was an office of the Socialist party at that time. He heard Lakhpat Singh making the announcement, but later on he was told that there was another person also with him. It is significant to note that in the original petition, in para 12(j) of the petition, the number of the congress car and the name of the person who are said to have made the announcement was not given. The above particulars were supplied after the amendment application was allowed.

93. Petitioner (P.W. 13) in para 42 of his cross-examination admits that he did not see Respondent No. 1 himself in Congress Car. The statement in para 12(j) of the petition that Respondent No. 1 got a false and defamatory announcement made was based on inference and not on personal knowledge. He could not state the exact words used by Lakhpat Singh who made the announcement. He did not hear Reoti Saran making an announcement from the car. He had to admit that Lakhpat Singh is not a Congress man and that Reoti Saran was a worker of Republican party and not a Congress man. The petitioner has not given any reason why members of rival parties would participate in canvassing for the benefit of the Congress candidate during the election or during the poll.

Shri Shah Nawaz Khan (R.W. 32) stated that no announcement was made from the Car No. USV 1715 which belonged to him. He further states that this car was out of order for the most part of election campaign. He has also stated that Lakhpat Singh and Reoti Saran were not his workers. From the evidence of Hakim Shafiq Ahmad (R.W. 23), Noor Ahmad (R.W. 25) and Harditt Singh (R.W. 26), it is also clear that Respondent No. 1's car (bearing No. USV 1715) was out of order and could not have been used for making the alleged announcement on 21st February, 1962.

Petitioner has told many falsehood. He has falsely verified some of the allegations in the petition and has falsely sworn the affidavit relating to para 12(a) of the petition.

I disbelieve his uncorroborated testimony. I hold that no announcement as alleged in para 12(j) of the petition was made on behalf of Respondent No. 1, on 21st February, 1962.

94. Issue Nos. 6, 7, 8(a) & (b).—Findings on these issues are in the negative as no evidence has been led by the petitioner.

95. Issue No. 9(a), (b) (c), (d).—The above issue is framed on the allegation made in para 15 of the petition. These allegations are not in the personal knowledge of the petitioner. The petitioner (P.W. 13) has stated in para 12 of his deposition that he saw at Meerut on 23rd February, 1962, when polling took place, Rickshaws hired by Congress at various polling stations namely Old Tahsil, Modipara, Lisari, Darwaza, Town Hall and Vaish Inter College. In para 51 of his cross-examination he says that he has himself seen some voters carried by Rickshaws. He has given the particulars of the names of the owners of the tractors and the number of cars used on the information of his workers, namely Raghubir Singh, Om Prakash, Jai Prakash, Kamil, Nardeo Shastri, Sheo Dutt Singh, Chandra Prakash and Nidhan Singh.

In para 53 of his cross-examination he adds that the persons who gave him the information about the Rickshaws were Abinash Chandra and P. K. Puri. They had also given him the names of the persons who they thought had hired the Rickshaws. He could not say whether the persons who informed him about the hiring of the motor car or the tractors had any personal knowledge as to who hired these tractors or that they were hired with the consent of Sri Shah Nawaz Khan.

None of the persons named by the petitioner have been examined by him, in support of his allegations, of which he has no personal knowledge. The finding on this issue is, therefore, in the negative.

96. Issue No. 10.—From the nature of the allegations made in the Election Petition by Sri Hari Raj Singh and the evidence on record, it can safely be inferred that the real person behind this Election Petition is Sri Maharaj Singh Bharti Respondent No. 2, though he denied having anything to do with it. He gave the following reasons for not filing the Election Petition himself:—

- (1) It is his conviction that for the sake of successful democracy election petition should be discouraged.
- (2) He has very little resources for filing the election petition.
- (3) The procedure of election petition herein is such that after the tempo of election is over, the witnesses are not available till the end of the petition.
- (4) There is no material gain as it takes time for the disposal of the petition and for the bye-election.

He concluded by saying that he had advised Sri Hari Raj Singh not to file the petition, but he did not agree with him. Still I find that Respondent No. 2 went all out in trying to support the petitioner particularly the allegations contained in para 12(b) of the petition concerning statements relating to his personal character or conduct.

The petitioner himself has very little resources and it appears from his own admission that Nidhan Singh who was the main supporter of Respondent No. 2 has been financing this litigation.

The election petition filed by Hari Raj Singh is frivolous. In view of the findings recorded I dismiss the petition.

The petitioner shall bear the costs of Respondent No. 1 amounting to Rs. 3,822.99 P. including Counsel's fee detailed below. I fix Rs. 1,000 as Counsel's fee.

	Rs.	P.
Applications	..	26-50
T.A. & D.A. of witnesses	..	2,242-14
Photostat copies charges	..	270-00
Expenses on account of summoning of records from Meerut	..	271-35
Charges of certified copies of documents filed	..	13-00
Counsel's fee	...	1,000-00
		<u>3,822-99</u>

Respondent No. 2 shall bear his own costs.

(Sd.) B. K. CHAUDHURI, Member,
Election Tribunal, Allahabad.

[No. 82/208/62.]

By Order,
PRAKASH NARAIN, Secy.

MINISTRY OF HOME AFFAIRS*New Delhi, the 17th December 1964*

S.O. 4307.—In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor-General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Classification, Control and Appeal) Rules, 1957, namely:—

1. These rules may be called the Central Civil Services (Classification, Control and Appeal) Sixth Amendment Rules, 1964.

2. In the Central Civil Services (Classification, Control and Appeal) Rules, 1957—

(a) in proviso (ii) to sub-rule (2) of rule 30; and

(b) in proviso (i) to sub-rule (1) of rule 32,

after the words “any representation which he may wish to make”, the words “only on the basis of the evidence adduced during such inquiry” shall be inserted.

[No. 7/36/63-Ests(A).]

R. M. SHROFF, Dy. Secy.

MINISTRY OF EXTERNAL AFFAIRS*New Delhi, the 11th December 1964*

S.O. 4308.—In exercise of the powers conferred by clause (b) of sub-section (2) of section 3 of the Special Marriage Act, 1954 (43 of 1954), the Central Government hereby makes the following further amendment in the Notification of the Government of India in the Ministry of External Affairs No. S.O. 1664, dated the 30th June, 1960, namely:—

In the Table below the said notification, after the entries relating to “Ghana”, the following shall be inserted, namely:—

(1)	(2)
“Havana	Charge D’Affairs, Embassy of India, Havana”.
and against “Singapore	Deputy High Commissioner for India, Singapore instead of Commissioner for India, Singapore.”

[No. T.434/12/64.]

S. K. CHATTERJEE, Under Secy.

MINISTRY OF FINANCE**(Department of Expenditure)***New Delhi, the 8th December 1964*

S.O. 4309.—In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution, the President, after consultation with the Comptroller and Auditor General in respect of persons serving in the

Indian Audit and Accounts Department, hereby makes the following rules further to amend the Contributory Provident Fund Rules (India), 1962, namely:—

1. These Rules may be called the Contributory Provident Fund (India) Eighth Amendment Rules, 1964.

2. In the Contributory Provident Fund Rules (India), 1962, for sub-clause (iv) of clause (b) of sub-rule (1) of rule 38, the following sub-clause shall be substituted, namely:—

“(iv) he shall thereupon be entitled to count towards pension service, rendered prior to the date of permanent transfer, to the extent permissible under the relevant Pension Rules.”

[No. F. 27(21)-EV(B)/64-CPF.]

New Delhi, the 9th December, 1964

S.O. 4310.—In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution, the President, after consultation with the Comptroller and Auditor General in respect of persons employed in the Indian Audit and Accounts Department, hereby makes the following rules further to amend the General Provident Fund (Central Services) Rules, 1960, namely:—

1. These Rules may be called the General Provident Fund (Central Services) Ninth Amendment Rules, 1964.

2. In the General Provident Fund (Central Services) Rules, 1960—

for the clause (iii) of sub-rule (b) of rule 35, the following clause shall be substituted, namely:—

“(iii) he shall thereupon be entitled to count towards pension, service rendered prior to the date of permanent transfer, to the extent permissible under the relevant Pension Rules.”

[No. F. 27(21)-EV(B)/64-GPF.]

C. K. SUBRAMANIAN, Under Secy.

(Department of Expenditure)

(Estt. III (A) Br.)

CORRIGENDA

In the Gazette of India Extraordinary dated the 10th November, 1964 in the Ministry of Finance (Department of Expenditure) Notification No. F.2(95)-EIII/62 dated the 28th October, 1964, the following corrections shall be made, namely:—

- (1) Page 1075, in Section 13, sub-section 12, against Serial No. 6-B 'Field Instructor' for "250—10—300—15—450—125/2—500" in column 3 read "250—10—300—15—450—25/2—500"
- (2) Page 1076, in Section 13, in sub-section 19, (1) against serial No. 39-B Telephone Operator (Clerk) for "93—3—131—EB—4—155" in column 4 read "95—3—131—EB—4—155."
- (ii) against serial No. 39—C Laboratory Assistant for "40—1—60—5/2—75—3—90" in column 3 read "40—2—60—5/2—75—3—90".
- (3) Page 1078, in Section 15, sub-section 13, for "Registrar of News paper in India" in column 1 read "Registrar of News Papers for India."
- (4) Page 1078, in Section 16, sub-section 3 for the sub-heading "(ii) after the existing entry at serial number 24, the following shall be inserted, namely" read "(ii) after the existing entry at serial number 27 the following shall be inserted, namely—"
- (5) Page 1083, in Section 25, sub-section 5, against serial number 8 "Superintendent Orphananj Market, Calcutta" for "175—25—500—EB—30—710" in column 3 read "275—25—500—EB—30—710".

(Department of Economic Affairs)

New Delhi, the 15th December 1964.

S.O. 4311.—In pursuance of sub-section (2) of Section 21 of the Industrial Finance Corporation Act, 1948 (15 of 1948), the Central Government, on the recommendation of the Board of Directors of the Industrial Finance Corporation of India hereby fixes 5 per cent per annum as the rate of interest payable on the bonds to be issued by the said Corporation in January, 1965 and maturing on the 1st January, 1966.

[No. F. 2(123)-Corp/64.]

A. K. NATARAJAN, Under Secy.

(Department of Economic Affairs)

New Delhi, the 16th December 1964

S.O. 4312.—In exercise of the powers conferred by sub-section (7) of section 35 of the State Bank of India Act, 1955 (23 of 1955) and in continuation of this Department's notification No. F. 4/92/61-SB dated the 15th December 1961, the Central Government, in consultation with the Reserve Bank of India, hereby directs that for the purpose of the conduct of the business of the Bank of Baghelkhand acquired by the State Bank of India under section 35 of the said Act, during the period between the 23rd December 1964 and the 31st December, 1966 both days inclusive—

(1) Section 33 of the State Bank of India Act shall apply as if:—

(a) Clause (i) has been substituted by the following clause namely “(i) the advancing and lending of money and the opening of cash credits with or without security”; and

(b) In clause (iv), the words “upon any of the securities specified in sub-clauses (a) to (d) of clause (i)” have been omitted and for the words “for or into any of the other investments above specified” the words “for and into any other investments” have been substituted.”

(2) The State Bank shall be exempt from clauses (a) and (c) of sub-section (1) of section 34 and clause (a) and sub-clause (ii) of clause (b) of sub-section (3) of that Section, in so far as they preclude the State Bank from—

(i) continuing or realising the loans or advances made for a period longer than six months or made against the security of immovable property;

(ii) continuing or realising the loans or advances made against any negotiable instrument which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership or does not mature within six months of the date of the loan or advance.”

[No. F. 4/92/61-SB.]

S.O. 4313.—In exercise of the powers conferred by sub-section (7) of section 35 of the State Bank of India Act, 1955 (23 of 1955) and in continuation of this Department's Notification No. F. 4/6/60-SB, dated the 18th December, 1961 the Central Government, in consultation with the Reserve Bank of India, hereby exempts the State Bank of India for the period from the 24th January 1965 to the 23rd January 1966, both days inclusive, from the provision of clauses (a) and (c) of sub-section (1) of section 34 of the said Act, in so far as they preclude the State Bank from—

(a) continuing or realising the advances against the security of immovable property made by the Manipur State Bank and taken over by the State Bank under the terms and conditions of acquisition by the State Bank of the business of the Manipur State Bank sanctioned under sub-section (2) of the said section 35 by the Central Government by an order in writing dated the 16th May, 1958 and

(b) making against the security of immovable property against which the advances referred to above have been made, such further advances as the State Bank may consider necessary or expedient for ensuring or facilitating the recovery of the advances made by the Manipur State Bank and realising such further advances.

[No. F. 4/6/60-SB.]

B. J. HEERJEE, Under Secy.

(Department of Economic Affairs)

New Delhi, the 16th December 1964

S.O. 4314.—Statement of the Affairs of the Reserve Bank of India, as on the 4th December, 1964.

BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital paid up	5,00,00,000	Notes	18,45,74,000
		Rupee Coin	4,76,000
Reserve Fund	80,00,00,000	Small Coin	8,98,000
National Agricultural Credit (Long Term Operations) Fund	86,00,00,000	Bills purchased and discounted:—	
		(a) Internal . . . . .	..
		(b) External . . . . .	..
National Agricultural Credit (Stabilisation) Fund	9,00,00,000	(c) Government Treasury Bills	164,11,44,000
National Industrial Credit (Long Term Operations) Fund	10,00,00,000	Balances held Abroad*	11,38,78,000
		Investments**	117,51,37,000
		Loans and Advances to:—	
		(i) Central Government . . . . .	..
		(ii) State Governments@	44,42,32,000

*Includes Cash and Short-term Securities.

**Excluding investment from the National Agricultural Credit (Long Term Operations) Fund, and the National Industrial Credit (Long Term Operations) Fund.

@ Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund but including temporary overdrafts to State Governments.

LIABILITIES	Rs.	ASSETS	Rs.
Deposits :—		Loans and Advances to :—	
(a) Government :		(i) Scheduled Banks†	18,26,45,000
(i) Central Government	86,30,02,000	(ii) State Co-operative Banks††	159,39,59,000
(ii) State Governments	5,48,96,000	(iii) Others	3,33,93,000
(b) Banks :		Loans, advances and Investments from National Agricultural Credit (Long Term Operations) Fund—	
(i) Scheduled Banks	89,23,11,000	(a) Loans and Advances to—	
(ii) State Co-operative Banks . .	2,74,02,000	(i) State Governments	28,09,41,000
(iii) Other Banks	1,59,000	(ii) State Co-operative Banks	11,42,33,000
(c) Others	144,57,15,000	(iii) Central Land Mortgage Banks . . . . .	..
Bills Payable	46,14,34,000	(b) Investment in Central Land Mortgage Bank Debentures Loans and Advances from National Agricultural Credit (Stabilisation) Fund	4,45,53,000
Other Liabilities	45,95,59,000	Loans and Advances to State Co-operative Banks . . . . .	..
Rupees	610 44,78,000	Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund—	
		(a) Loans and Advances to the Development Bank . . . . .	..
		(b) Investment in bonds/debentures issued by the Development Bank . . . . .	..
		Others Assets	29,44,15,000
		Rupees	610 44,78,000

† Includes Rs. 4,26,00,000 advanced to scheduled banks against usance bills under section 17(4) (c) of the Reserve Bank of India Act.

†† Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 9th day of December, 1964.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 4th day of December, 1964

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department	18,45,74,000		Gold Coin and Bullion :—		
Notes in circulation	2472,96,73,000		(a) Held in India	117,76,10,000	
Total Notes issued		2491,42,47,000	(b) Held outside India	..	
			Foreign Securities	85,45,69,000	
			TOTAL		203,21,79,000
			Rupce Coin		102,07,53,000
			Government of India Rupce Securities		2186,13,15,000
			Internal Bills of Exchange and other commercial paper		..
TOTAL LIABILITIES		2491,42,47,000	TOTAL ASSETS		2491,42,47,000

Dated the 9th day of December, 1964.

P. C. BHATTACHARYYA,
Governor.

[No. F. 3(2)-EC/64.]

New Delhi, the 18th December 1964

S.O. 4315.—Statement of the Affairs of the Reserve Bank of India, as on the 4th December, 1964.

BANKING DEPARTMENT

LIABILITIES		Rs.	ASSETS		Rs.
Capital paid up	. . . . .	5,00,00,000	Notes	. . . . .	9,69,55,000
			Rupee Coin	. . . . .	5,80,000
Reserve Fund	. . . . .	30,00,00,000	Small Coin.	. . . . .	9,33,000
National Agricultural Credit (Long Term Operations) Fund	. . . . .	36,00,00,000	Bills purchased and discounted:—		
			(a) Internal	. . . . .	..
			(b) External	. . . . .	..
National Agricultural Credit (Stabilisation) Fund	. . . . .	9,00,00,000	(c) Government Treasury Bills	. . . . .	136,03,77,000
			Balances held Abroad*	. . . . .	10,84,32,000
National Industrial Credit (Long Term Operations) Fund	. . . . .	10,00,00,000	Investments**	. . . . .	142,44,71,000
			Loans and Advances to:—		
			(i) Central Government	. . . . .	..
			(ii) State Governments (a)	. . . . .	31,62,89,000

*Includes Cash and Short-term Securities.

**Excluding investments from the National Agricultural Credit (Long Term Operations) Fund and the National Industrial Credit (Long Term Operations) Fund.

(a) Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

LIABILITIES		Rs.	ASSETS		Rs.
Deposits :—			Loans and Advances to :—		
(a) Government :			(i) Scheduled Banks†		
(i) Central Government			(ii) State Co-operative Banks††		
(ii) State Governments			(iii) Others		
(b) Banks :			Loans, advances and Investment from National Agricultural Credit (Long Term Operations) Fund—		
(i) Scheduled Banks			(a) Loans and Advances to—		
(ii) State Co-operative Banks			(i) State Governments		
(iii) Other Banks			(ii) State Co-operative Banks		
(c) Others			(iii) Central Land Mortgage Banks		
Bills Payable			(b) Investment in Central Land Mortgage Bank Debentures		
Other Liabilities			Loans and Advances from National Agricultural Credit (Stabilisation) Fund.		
Rupees			Loans and Advances to State Co-operative Banks		
			Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund—		
			(a) Loans and Advances to the Development Bank		
			(b) Investment in bonds/debentures issued by the Development Bank		
			Other Assets		
			Rupees		

† Includes Rs. 1,41,00,000 advanced to scheduled banks against usance bills under section 17(4)(c) of the Reserve Bank of India Act.

†† Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 16th day of December, 1964.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 11th day of December, 1964.

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department	9,69,55,000		Gold Coin and Bullion :—		
Notes in circulation	2510,53,38,000		(a) Held in India	117,76,10,000	
Total Notes issued		2520,22,93,000	(b) Held outside India . . . . .	..
			Foreign Securities	85,45,69,000	
			TOTAL		203,21,79,000
			Rupee Coin		100,88,09,000
			Government of India Rupee Securities		2216,13,05,000
			Internal Bills of Exchange and other commercial paper . . . . .		..
TOTAL LIABILITIES		2520,22,93,000	TOTAL ASSETS		2520,22,93,000

Dated the 16th day of December, 1964.

P. C. BHATTACHARYYA,
Governor,

[No. F (3)2-BC/64.]

R. K. SESHADRI,
Director (Banking & Insurance).

CORRIGENDUM

In the statement of Affairs of the Reserve Bank of India, Issue Department for the week ended the 6th November 1964 published in the Gazette of India dated 28th November 1964, Part II, Section 3(ii) on page 4470, on the 'Assets' side for the amount 2111,14,32,000 indicated against Government of India Rupee Securities read—2181,14,32,000.

CENTRAL BOARD OF DIRECT TAXES

INCOME-TAX

New Delhi, the 15th December 1964

S.O. 4316.—In exercise of the powers conferred by sub-section (1) of Section 122 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following further amendments in the Schedule appended to its notification No. 49-Income-tax, dated the 27th July, 1964, namely:—

- (a) Against 'A' Range, Indore, under column 2, and 12, Mandsaur.
- (b) Against 'B' Range, Indore, under column 2,
 - (i) the existing entry at S. No. 9 shall be deleted and
 - (ii) the remaining entries at S. Nos. 10 and 11 shall be renumbered as 9 and 10.
- (c) Against Nagpur Range under column 2, add 14. Special Investigation Circle-D, Nagpur.

Explanatory Note:

The amendments to the existing Schedule have become necessary on account of redistribution of work amongst the Appellate Assistant Commissioners of Income-tax and creation of an additional Circle known as Special Investigation Circle 'D' Ward, Nagpur in the Commissioner's charge.

(This note does not form a part of the notification but is intended to be merely clarificatory).

[No. 81 (F. No. 50/11/64-ITJ.)]

New Delhi, the 17th December 1964

S.O. 4317.—In exercise of the powers conferred by sub-section (1) of Section 122 of the Income Tax Act, 1961 (43 of 1961) and in supersession of all previous notification in this regard, the Central Board of Direct Taxes hereby directs that the Appellate Assistant Commissioners of Income-tax of the Ranges specified in column 1 of the Schedule below, shall perform their functions in respect of all persons and incomes assessed to Income-tax or Super-tax in the Income-tax Circles, Wards and Districts specified in the corresponding entry in column 2 thereof:—

SCHEDULE

Range 1	Income-tax Circles, Wards and Districts 2
(Central) Range I, Calcutta.	Central Circles I to X, Calcutta.
(Central) Range II, Calcutta.	Central Circles XI to XX and XXII, Calcutta.

Where an Income-tax Circle, Ward and District or part thereof stands transferred by this notification from one range to another range, appeals arising out of assessments made in that Income-tax Circle, Ward or District or part thereof and pending immediately before the date of this notification before the Appellate Assistant Commissioner of the Range from whom that Income-tax Circle, Ward or District or part thereof is transferred shall, from the date this notification shall take effect, be transferred to and dealt with by the Appellate Assistant Commissioner of the Range to whom the said Circle, Ward or District or part thereof is transferred.

Explanatory Note

The amendment has become necessary on account of the creation of a new Circle in the Commissioner's Charge.

(The above note does not form a part of the notification but is intended to be merely clarificatory).

[No. 82(F.No. 50/112/64-ITJ.)]

T. N. PANDEY, Under Secy.

MINISTRY OF COMMERCE*New Delhi, the 15th December 1964*

S.O. 4318.—In exercise of the powers conferred by section 3 of Essential Commodities Act 1955 (10 of 1955), the Central Government hereby makes the following Order further to amend the Cotton Textiles (Control) Order, 1948, namely:—

1. This Order may be called as Cotton Textiles (Control) Sixth Amendment Order, 1964.

2. In the Cotton Textiles (Control) Order, 1948, in sub-clause (8) of clause 12, the following proviso shall be inserted, namely:—

“Provided that nothing in this sub-clause shall apply to a person desiring to acquire and install spindles for the purpose of spinning yarn solely from cotton waste of counts 10s and below.”

[No. F. 10/305/64-Tex(B).]

B. K. VARMA, Under Secy.

MINISTRY OF INDUSTRY AND SUPPLY**(Department of Industry)****ORDER***New Delhi, the 19th December 1964*

S.O. 4319/ECA/1/64.—In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs that the powers conferred on it by section 3 of the said Act to make orders under clauses (c), (d), (e), (f), (h) and (j) of sub-section (2) of that section shall, in relation to cement, be exercisable also by the Lieutenant Governor of Goa, Daman and Diu: Provided that—

- (i) no such order shall be made by the Lieutenant Governor of Goa, Daman and Diu without the prior approval of the Central Government; and
- (ii) no order made by the Lieutenant Governor of Goa, Daman and Diu in exercise of the aforesaid powers shall have effect in so far as it is repugnant to any order made under the said sub-section by the Central Government.

[No. 14-2/63-Cem.II.]

R. K. RANGAN, Under Secy.

(Indian Standards Institution)*New Delhi, the 14th December 1964*

S.O. 4320.—In licence No. CM/L-701 dated 26 June 1964 held by M/s Godrej Soaps Pvt. Ltd. of Vikhroli, Bombay-79 having their Regd. office at 316 Delsle Road, Bombay-11 the details of which were published under S.O. 2590 in the Gazette of India, Part II, sub-section 3(ii) dated 1st August 1964 Stearic Acid, Technical, Grade 1 has been included w.e.f. 1st November 1964.

[No. MD/12:1381.]

New Delhi, the 15th December 1964

S.O. 4321.—Inpartial modification of the then Ministry of Commerce and Industry (Indian Standards Institution) notification published under S. O. 3817 dated 10th December 1962 in the Gazette of India Part II, Section 3, Sub-Section (ii) dated 22nd December 1962, the Indian Standards Institution hereby notifies that the marking fee per unit for Preformed Fillers for Expansion Joints, details of which are given in the Schedule hereto annexed, has been revised. The revised rate of marking fee shall come into force with effect from 1st October 1964.

THE SCHEDULE

Serial No.	Product/Class of Product	No. and Title of Relevant Indian Standard	Unit	Marking Fee per Unit
1	2	3	4	5
1	Preformed Fillers For Expansion joint In Concrete Non-Extruding And Resilient Type (Bitumen—Impregnated Fibre)	IS: 1838-1961 Specification for Preformed Fillers for Expansion Joint in Concrete Non-Extruding And Resilient Type (Bitumen—Impregnated Fibre)	One Square Metre	10 Paise

[No. MD/18:2]

D. V. KARMARKAR,
Joint Director (Marks)

MINISTRY OF PETROLEUM AND CHEMICALS

New Delhi, the 15th December, 1964

S.O. 4322.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from the Ankleshwar Oil field in Gujarat State to Baroda in Gujarat State, pipelines should be laid by the Oil and Natural Gas Commission and that for the purpose of laying such pipelines, it is necessary to acquire the right of user in the land described in the Schedule annexed hereto;

2. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipelines under the land to the competent authority at Elampeco, 4th Floor Sayajiganj Opp. College Lokmanya Tilak Road, Baroda in the office of the Gujarat Pipeline Project, Oil and Natural Gas Commission. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

State—Gujarat					District—Baroda		Taluka—Baroda	
Village					Survey No.	Acre	Guntha	Sq. Yds.
Undera	.	.	.	.	Road	0	0	100
"	.	.	.	.	85	0	5	88
"	.	.	.	.	84	0	5	35
"	.	.	.	.	83	0	7	66
"	.	.	.	.	82	0	9	38
"	.	.	.	.	79	0	2	96
"	.	.	.	.	69	0	1	12
"	.	.	.	.	78	0	11	95
"	.	.	.	.	74	0	8	34
"	.	.	.	.	76	0	13	42
"	.	.	.	.	75	0	0	72
"	.	.	.	.	Road	0	1	46

Village	Survey No.	Acre	Guntha	Sq. Yds.
Chhani	619/1	0	23	84
"	Road	0	1	79
"	618	0	20	7
"	618/P	0	5	62
"	693	0	17	41
"	625	0	34	19
"	682	0	11	56
"	683	0	5	35

[No. 31(38)/63-ONG.]

S.O. 4323.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum between Barauni Refinery in Bihar State and Kanpur in Uttar Pradesh State, a pipeline should be laid by the Indian Oil Corpn. Limited and that for the purpose of laying such a pipeline, it is necessary to acquire the right of user in the land described in the Schedule annexed hereto;

2. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the competent authority at 7/166 Swarup Nagar, Kanpur. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

State—Uttar Pradesh		Tahsil—Kanpur		District—Kanpur	
Village	Survey No.	Extent	Survey No.	Extent	
		B.B.B.		B.B.B.	
1. Satbari	297	0 0 5	404	0 6 5	
	300/2	0 6 10	414	0 12 10	
	398	0 13 0	417	0 18 10	
	401	0 10 10	418	0 6 10	
	402	0 1 10	461	0 6 0	
	403	0 10 10	462	0 12 10	
2. Nagwan	50 M	0 6 0			
3. Nlwada Bausar	294	0 2 0	337	0 0 10	
	329/1	0 1 8	343	0 0 12	
	336	0 0 10			
4. Tharepa	5	0 2 10	138	0 1 0	
	13	0 3 10	140	0 1 0	
	14	0 1 0	203/3	0 4 0	
	119	0 0 5	265	0 3 0	
	121	0 0 10	266	0 1 0	
	125	0 0 10	270	0 0 5	
	126	0 0 10	280	0 0 10	
	127	0 1 0	290	0 1 10	
	129	0 0 10			

Village	Survey No.	Extent			Survey No.	Extent		
		B.B.B.				B.B.B.		
5. Pooranpur	194	0	0	5	729	0	0	10
	196	0	0	10	734	0	0	10
	200	0	1	15	753	0	2	0
	315	0	0	5	770	0	14	10
	330	0	1	5	771	0	6	0
	331	0	4	15	793	0	9	10
	333	0	0	5	795	0	1	15
	365	0	0	5	796	0	1	5
	371	0	1	15	950	0	3	0
	381	0	0	10	952	0	10	10
	589	0	0	5	960	0	1	5
	591	0	5	15	961	0	8	15
	595	0	0	10	963	0	3	0
	696	0	2	0	967	0	6	5
	699	0	1	10	968	0	2	0
	701	0	0	10	981	0	5	0
	728	0	0	19	982	0	7	10
6. Karbigwan	102/1	0	3	0	647	0	0	5
	105/1	0	14	0	648	0	0	5
	106/2	0	6	0	705	0	3	0
	349/2	0	3	10	709	0	1	0
	349/3	0	1	0	712	0	1	0
	350	0	5	0	714	0	2	5
	359/3	0	7	10	715	0	6	10
	360/3	0	8	10	719	0	4	10
	371/1	0	2	0	721	0	0	5
	615	0	1	0	722	0	1	0
	617/2	0	4	0	1964	0	0	10
	617/3	0	1	0	1965/1	0	0	10
	620	0	0	10	1965/2	0	0	10
	622	0	5	0	1966	0	2	5
	623	0	1	10				
7. Sikathiya Purwa	1865	0	2	6				
8. Nau Gawan	1258	0	1	0	1543	0	4	0
	1262	0	1	10	1544	0	2	0
	1277	0	3	0	1549/1	0	2	0
	1282	0	0	10	1549/2	0	2	10
	1290	0	1	0	1550	0	0	15
	1295	0	1	0	1552	0	4	0
	1319	0	0	10	1253	0	1	0
	1320	0	2	0	1669/9	0	1	0
	1362/3	0	1	0	1671	0	1	0
	1362/4	0	5	10	1672	0	2	0
	1363	0	1	10	1725	0	2	10
	1435	0	2	0	1726	0	6	10
	1445	0	3	0	1727	0	1	0
	1448/1	0	0	10	1729	0	0	10
	1536	0	1	0	1759	0	1	0
	1542	0	3	0	1765	0	7	0

[No. 31/50/63-ONG.]

CORRIGENDA

New Delhi, the 15th December 1964

S.O. 4324.—In the Schedule to the notification of the Government of India in the Ministry of Petroleum and Chemicals S.O. No. 3792 dated the 23rd October, 1964, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 31st October, 1964 in village Dumrawn T. No. 168 read extent 0:02 acre for 0:20 are against Plot No. 661.

[No. 31/47/63-ONG-6-Bux.]

S.O. 4325.—In the Schedule to the notification of the Government of India in the Ministry of Petroleum and Chemicals S.O. No. 3789, dated the 23rd October, 1964, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 31st October, 1964:—

- (1) In Village Khelafapur T. No. 38, read Plot No. 891 for 981 against extent 0.08 acre.
- (2) In Village Nayayapur T. No. 33 read extent 0.055 acre for 0.045 acre against Plot No. 121.
- (3) In Village Khelafapur T. No. 138 Plot No. 867 with extent 0.950 acre has been published twice and one entry relating thereto shall be deleted.

[No. 31/47/63-ONG/10-Bux.]

S.O. 4326.—In the Schedule to the notification of the Government of India in the Ministry of Petroleum and Chemicals S.O. No. 3725, dated the 8th October, 1964, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 24th October, 1964:—

1. In Village Ghansampur T. No. 136 read Plot No. 405 extent 0.04 acre instead of 0.05 acre.
2. In Village Babupur T. No. 137 read Plot No. 746 extent 0.069 instead of 0.068 acre.
3. In Village Neuri T. No. 76, read extent 0.09 acre against survey plot No. 1224 for survey plot No. 122.

[No. 31/47/63-ONG-2-PAT.]

S.O. 4327.—In the Schedule to the notification of the Government of India in the Ministry of Petroleum and Chemicals S.O. No. 3791, dated the 23rd October, 1964, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 31st October, 1964:—

1. In Village Kutubpur T. No. 5, read Plot No. 165 for Plot No 163 against extent "0.695" acres.
2. In Village Gobindpur T. No. 16, read Plot No. 384 for 348 against extent 0.065 acres.
3. In Village Bankipur T. No. 18, read extent 0.02 acres for 0.20 acres against Plot No. 420.
4. Read Village Mirjapur Nohta instead of Mirjapur Mohta.

[No. 31/47/63-ONG-8-PAT.]

S.O. 4328.—In the Schedule to the notification of the Government of India in the Ministry of Petroleum and Chemicals S.O. No. 3822, dated the 27th October, 1964, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 7th November, 1964:—

1. In Village Shahpur T. No. 155 read Plot No. 661 for 611 against extent 0.07 acre.
2. In Village Rukunpura T. No. 165 read extent 0.125 acre for 0.4125 area against Plot No. 451
3. In Village Majhaur T. No. 167 read extent 0.05 acre for 0.005 acre against Plot No. 774.
4. In Village Champapur T. No. 146 read Plot No. 845 for 945 against extent 0.09 acre.

[No. 31/47/63-ONG-10-PAT.]

S.O. 4329.—In the Schedule to the notification of the Government of India in the Ministry of Petroleum and Chemicals S.O. No. 3818, dated the 26th October, 1964, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 7th November, 1964:—

1. In Village Dehri T. No. 345 read extent 0.06 acre for 0.05 acre against Plot No. 88.
2. In Village Dehri T. No. 345 read extent 0.55 acre for 0.06 acre against Plot No. 89.
3. In Village Chaurasani T. No. 231, read extent 0.09 acre for 30.09 acre against Plot No. 355.
4. In Village Kalyanpur T. No. 229 read Plot No. 416 for 516 against extent 0.12 acre.

[No. 37/47/63-ONG-3-AR.]

P. P. GUPTA, Under Secy.

MINISTRY OF CIVIL AVIATION

New Delhi, the 15th December 1964

S.O. 4330.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 6 of the Aircraft Act, 1934 (22 of 1934) and in supersession of the notification of the Government of India in the Ministry of Transport and Communications (Departments of Communications and Civil Aviation) No. 10-A/63-60 dated the 28th June, 1962, the Central Government, being of the opinion that it is in the interests of public safety so to do, hereby orders that no aircraft, other than an aircraft engaged in a scheduled air transport service, shall make flights into, or in transit across, the territory of India save in accordance with the following conditions which shall be observed by every person in charge of such aircraft or otherwise assisting in the flight thereof, namely:—

1. Every such aircraft shall, immediately upon entry into India, and without a prior landing elsewhere in India, be flown to and landed at—

- (a) if the entry is from the West, Bombay (Santa Cruz) Airport, Calcutta (Dum Dum) Airport, or Madras (St. Thomas Mount) Airport; and if the entry is from the West *via* Karachi Airport, from the East or the South, or from Pakistan, Bombay (Santa Cruz) Airport, Calcutta (Dum Dum) Airport, Tiruchirappalli Airport, Delhi (Palam) Airport, Madras (St. Thomas Mount) Airport or Ahmedabad Airport;
- (b) if the entry is from Nepal, Calcutta (Dum Dum) Airport, Delhi (Palam) Airport, Patna Airport, Varanasi (Babatpur) Airport, Bombay (Santa Cruz) Airport or Ahmedabad Airport;

Provided that the aircraft entering from the West may land direct at Delhi (Palam) Airport subject to the following conditions, namely:—

- (1) All persons on board coming from yellow fever infected areas as declared by the Central Government shall be in possession of valid international certificates against yellow fever.
- (2) The aircraft shall have been disinfected at the commencement of the journey in accordance with the procedure laid down in Schedule VI of the Indian Aircraft (Public Health) Rules, 1954, or the procedure recommended by the World Health Organization.
- (3) The Pilot-in-Command of the aircraft shall send a radio message three hours before arrival about the state of health of any person on board, who has visited a yellow fever infected Area, as declared by the Central Government, within the previous nine days and who is not in possession of a valid yellow fever certificate.
- (4) If, on inspection of the aircraft, the Airport Health Officer detects any person or crew suspected to be infected with yellow fever due to any reason, the Airport Health Officer may direct the Pilot-in-Command of the aircraft to proceed to Calcutta or Bombay or any other place as may be designated by the Airport Health Officer and the Pilot-in-Command of the aircraft shall obey any such direction.
- (5) The Central Government shall not be liable for any loss or damage whatsoever arising out of the diversion of the aircraft or for any other reasons:

Provided also that no traffic shall be set down in India except as under and with the prior permission of the Director General of Civil Aviation, India:—

- (i) if the entry is from the West, at Delhi (Palam) Airport or Bombay (Santa Cruz) Airport;
- (ii) if the entry is from the East, at Calcutta (Dum Dum) Airport. Aircraft from Singapore may also set down traffic at Madras (St. Thomas Mount) Airport;
- (iii) if the entry is from the South, at Madras (St. Thomas Mount) Airport or Tiruchirappalli Airport; and
- (iv) if the entry is from Nepal, at Calcutta (Dum Dum) Airport, Delhi (Palam) Airport, Patna Airport or Varanasi (Babatpur) Airport.

2. The aircraft, after such landing, shall not proceed further unless the pilot has obtained a clearance certificate in writing from an officer duly authorised by the Central Government in this behalf:

Provided that the Central Government may by general or special order exempt any aircraft or class of aircraft generally or for any specified flight from the provisions of this Order.

[No. F. 10-A/101-62.]

K. GOPALAKRISHNAN, Dy. Secy.

MINISTRY OF IRRIGATION AND POWER

New Delhi, the 28th November 1964

S.O. 4331.—In pursuance of sub-section (2) of Section 36A of the Indian Electricity Act, 1910 (9 of 1910), the Central Government is pleased to nominate Shri K. G. R. Iyer, Joint Secretary to the Government of India, Ministry of Irrigation and Power, as the Chairman of the Central Electricity Board, *vice* Shri M. K. Kidwai.

[No. EL-II-9(2)/64.]

B. C. GANGOPADHYAY, Dy. Secy.

MINISTRY OF EDUCATION

ARCHAEOLOGY.

New Delhi, the 17th December, 1964.

S.O. 4332.—Whereas by notification of the Government of India in the Ministry of Education No. F. 4-25/64. C. 1, dated the 25th July, 1964, published in Part II, Section 3, Sub-section (ii) of the Gazette of India, dated the 1st August, 1964, the Central Government gave notice of its intention to declare the archaeological monument specified in the Schedule below to be of national importance.

And whereas no objections have been received to the making of such declaration.

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby declares the said archaeological monument to be of national importance.

SCHEDULE

Sl. No.	State	District	Tehsil	Locality	Name of monument Site
1	Jammu and Kashmir	Udhampur	Ramnagar	Babour, Thalera village	Temple of Devi Bhagwat together with adjacent land comprised in Survey plot Nos. 2000, 2080, 2081, 2083, 2084, 2085 and 2086.
Revenue plot number to be included under protection	Area	Boundaries	Ownership	Remarks	
7	8	9	10	11	
Survey plot Nos. 2000, 2080, 2081, 2083, 2084, 2085 and 2086.	15 Kanals and 6 Marlas	North: Survey Plot No. 2082 East: Survey Plot Nos. 1994 and 1995 South : Survey Plot Nos. 2092, 2091, 2089, 2088 and 2087. West : Survey Plot Nos. 2070, 2079 and 2087	Survey Plot No. 2084 including the temple is village property and remaining area under private ownership.	Under religious use.	

[No. 4-25/64-C. 1.]

New Delhi, the 18th December 1964

S.O. 4333.—Whereas by notification of the Government of India in the Ministry of Education No. F. 4-26/64.C.1, dated the 25th July, 1964, published in Part II, Section 3, sub-section (ii) of the Gazette of India dated the 1st August, 1964, the Central Government gave notice of its intention to declare the archaeological monument specified in the Schedule below to be of national importance.

And whereas no objections have been received to the making of such declaration.

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby declares the said archaeological monument to be of national importance.

SCHEDULE

Sl. No.	State	District	Tehsil	Locality	Name of monument site	Revenue plot number to be included under protection	Area	Boundaries	Ownership	Remarks
1.	2	3	4	5	6	7	8	9	10	11
1.	Jammu and Kashmir	Anantnag	Anantnag	Ranbelpur	Ancient temple of Martand together with adjacent land comprised in survey plot No. 1050	Whole of survey plot No. 1050	71 Kanals and 8 Marlas	North : Survey Plot Nos. 1061, 1057, 1051 and 1045. East : Survey Plot Nos. 1259 and 1179. South : Survey Plot No. 1179. West : Survey Plot Nos. 1048 and 1049	Government	Not in religious use.

[No. F. 4-26/64 C.1.]

S. J. NARSLAN,
Assistant Educational Adviser.

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 14th December 1964

S.O. 4334.—In exercise of the powers conferred by Section 5(1) of the Cinematograph Act, 1952 and sub-rule (3) of rule 9 read with sub-rule (2) of rule 9 and sub-rule (3) of rule 8 of the Cinematograph (Censorship) Rules, 1958, the Central Government hereby re-appoints Smt. Raji Rangachary, after consultation with the Central Board of Film Censors, as a member of the Advisory Panel of the said Board at Madras with effect from 6th November, 1964.

[No. F. 11(4)/63-FC.]

H. N. AGARWAL, Dy. Secy.

MINISTRY OF FOOD AND AGRICULTURE

(Department of Agriculture)

(I.C.A.R.)

New Delhi, the 16th December 1964

S.O. 4335.—Under Section 4(x) of the Indian Cotton Cess Act, 1923 (14 of 1923), the Central Government are pleased to appoint Shri S. S. Puri, Secretary, National Cooperative Development Corporation, C-56, South Extension, Part II, New Delhi-16 to be member of the Indian Central Cotton Committee upto 31st March, 1965 vice Shri N. P. Chatterji.

[No. 1-11/64-Com.III.]

N. K. DUTTA, Under Secy.

MINISTRY OF COMMUNITY DEVELOPMENT AND COOPERATION

(Department of Cooperation)

New Delhi, the 15th December 1964

S.O. 4336.—In exercise of the powers conferred by Section 5B of the Multi-Unit Cooperative Societies Act, 1942 (6 of 1942), the Central Government hereby directs that the following amendment shall be made in the notification of the Government of India in the Ministry of Community Development and Cooperation, (Department of Cooperation), No. S.O. 1593, dated the 28th June, 1961, published at page 1555 of Part II Section 3(ii) of the Gazette of India of the 8th July, 1961, namely:—

In the said notification against Serial No. 11 for the entry "Shri V. R. Mehta" the entry "Shri H. M. Joshi" shall be substituted.

[No. 3-14/64-CT.]

A. C. BANDOPADHYAY, Dy. Secy.

DEPARTMENT OF SOCIAL SECURITY

New Delhi, the 15th December 1964

S.O. 4337.—Whereas the Central Government was satisfied that

1. M/s. Jindal Steel Works.
2. M/s. Jain Steel Rolling Mills.
3. M/s. Banarsi Dass Brij Lal Jain.
4. M/s. Metro Cycle Indus.
5. M/s. Dilshad Manufacturing Indus.
6. M/s. R-Habib-Ullah and Sons.
7. M/s. Rawat & Bros.

were situated in the Malerkotla which area was a sparse area; (that is, an area whose insurable population was less than 500) in the district of Sangrur in the State of Punjab;

2. And, whereas by virtue of their location in a sparse area, the aforesaid factories were granted exemption from the payment of the employers' special contribution under section 73F of the Employees' State Insurance Act, 1948 (34 of 1948) until the enforcement of the provisions of Chapter V of the Act in that area, by the Central Government in the Ministry of Labour and Employment *vide* notification No. S.O. 135 dated the 5th January, 1962;

3. And, whereas the Central Government is now satisfied that the insurable population of the Malerkotla area in the District of Sangrur in the State of Punjab has now exceeded 500 and it is no longer a sparse area;

4. Now, therefore, in exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Labour and Employment No. S.O. 135 dated the 5th January, 1962, namely,

In the Schedule to the said notification, against serial No. 15, the entry "Malerkotla" under column No. 3 and the entries under column No. 4 relating thereto shall be omitted.

[No. F. 6(73)/61-HI.]

S.O. 4338.—In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the 132 KV Grid Sub-station of the Damodar Valley Corporation, at Patna (Jakkampur), from all the provisions of the said Act, except Chapter VA, for a further period upto and including the 10th November, 1965.

[No. F. 6(125)/63-HI.]

S.O. 4339.—Whereas the Government of the State of Rajasthan has, in pursuance of the powers conferred by clause (d) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), nominated Dr. P. L. Rishi, Director, Medical and Health Services, Rajasthan as a Member of the Employees' State Insurance Corporation to represent that Government *vice* Dr. S. C. Mehta.

Now, therefore, in pursuance of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Labour and Employment, No. S.O. 1879 dated the 11th June, 1962, namely:—

In the said notification, under the heading "Members", under the sub-heading "[Nominated by the State Government under clause (d) of section 4]", in item 19 for the entry "Dr. S. C. Mehta", the entry "Dr. P. L. Rishi" shall be substituted.

[No. F. 1/49/64-HI.]

S.O. 4340.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendment in the notification of the Government of India in the Department of Social Security No. S.O. 3446 dated the 18th September, 1964, namely:—

In the Schedule to the said notification, against Serial No. 1, under column 4, for the entries "1. P.W.D. (B and R) Workshop" and "2. P.W.D., (Band R) Workshop" the entry "P.W.D. (B and R) Workshop, Mala Road, Purana Telghar, Kotah" shall be substituted.

[No. F. 6(70)/63-HI.]

S.O. 4341.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Labour and Employment No. 895 dated the 4th March, 1964 namely:—

In the Schedule to the said notification,

- (i) against serial No. 3, the entry "Pachora" occurring in column 3 and the entry relating thereto in column 4 shall be omitted;
- (ii) against serial No. 7, the entry "Lonawala" occurring in column 3 and the entry relating thereto in column 4 shall be omitted.

[No. F.7(15)/62-HI.]

S.O. 4342.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Labour and Employment No. S.O. 2665 dated the 2nd November, 1961, namely:—

In Schedule IV to the said notification,

- (i) against serial No. 9 the entry "Pachora" occurring in column 4 and the entries relating thereto in column 5 shall be omitted;
- (ii) against serial No. 17, the entry "Lonawala" occurring in column 4 and the entries relating thereto in column 5 shall be omitted;
- (iii) against serial No. 18, the entry "Vengurla" occurring in column 4 and the entries relating thereto in column 5 shall be omitted.

[No. F. 6(141)/59-HI.]

S.O. 4343.—Whereas the Central Government was satisfied that

1. M/s. Jeypore Timber and Veneer Mills Ltd.,
2. M/s. N. P. Ray's Veneers and
3. M/s. Sarda Plywood Industries (P) Ltd.

are all situated in the Jeypore area which was a sparse area (that is, an area whose insurable population was less than 500) in the district of Lakhimpur in the State of Assam);

2. And, whereas by virtue of their location in a sparse area, the aforesaid factories were granted exemption from the payment of the employers' special contribution under section 73F of the Employees' State Insurance Act, 1948 (34 of 1948) until the enforcement of the provisions of Chapter V of the Act in that area by the Central Government in the Ministry of Labour and Employment vide notification No. S.O. 845 dated the 16th March, 1962;

3. And, whereas the Central Government is satisfied that the insurable population of Jeypore area in the district of Lakhimpur in the State of Assam has now exceeded 500 and it is no longer a sparse area;

4. Now, therefore, in exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour and Employment No. S.O. 845 dated the 16th March, 1962, namely:—

In the Schedule to the said notification, against serial No. 7, the entry 'Jeypore' under column 3 and the entries relating thereto in column 4 shall be omitted.

[No. F. 6(79)/61-HI.]

New Delhi, the 16th December 1964

S.O. 4344.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Labour and Employment No. 2843 dated the 24th September, 1963, namely:—

In the Schedule to the said notification,

- (i) against serial No. 4, the entry 'Pachora' occurring in column 3 and the entries relating thereto in column 4 shall be omitted.
- (ii) against serial No. 12, the entries 'Lonawala' and 'Sewanagar' occurring in column 3 and the respective entries relating thereto in column 4 shall be omitted;
- (iii) against serial No. 13 the entry 'Vengurla' occurring in column 3 and the entries relating thereto in column 4 shall be omitted.

[No. F. 6(111)/63-HI.]

S.O. 4345.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Labour and Employment No. S.O. 137 dated the 9th January, 1962 namely:—

In the said notification,

- (i) in the entries against serial No. 2, in the entries under column 4, against the entry "Bagasara" under column 3 for "Bagasara Oil Mill" "Bagasara Power House" shall be substituted;
- (ii) in the entries against serial No. 3—for "5. Bharat Quarry Construction" under column No. 4, the following entries shall be inserted respectively under columns 3 and 4 namely:—

"3	4
Chitrasani	1. Bharat Quarry Construction"

- (iii) in the entries against serial No. 5—in the entries under column 4 against the area "Palitana" for "Concrete Works" "Palitana Concrete Works" shall be substituted;

- (iv) in the entries against serial No. 10—

- (a) for "3 Natvarlal Ambalal & Co." under column No. 4, against the entry "Vadod" under column no. 3, the following entries shall be inserted respectively under columns 3 and 4 namely:—

"3	4
Gopalpura	1. Natvarlal Ambalal & Co."

- (b) in the entry under column No. 4 against the entry "Kapadwanj" in column 3, for "Mafatlal Oil Mill", "Mafatlal Kantilal and Co. Oil Mills", shall be substituted;

- (c) for the entry "1. M/s. Naranbhai Madhusudan & Bros" under column 4 against the entry "Sarsa" under column 3, the entry "1. M/s. Narharibhai Madhusudan & Bros." shall be substituted.

[No. F. 6(72)/61-HI.]

New Delhi, the 19th December 1964

S.O. 4346.—Whereas the Central Government is satisfied that each of the factories established or acquired by the Central Government in the Ministry of Defence since the 1st July 1953 and situated in such areas where the provisions of Chapter V of the Employees' State Insurance Act, 1948 (34 of 1948), have not yet been enforced, is both non-commercial and non-competitive in nature;

Now, therefore, in exercise of the powers conferred by section 73F of the said Act, the Central Government hereby exempts each of the said factories from the payment of the Employers' special contribution leviable under Chapter V A of the said Act.

[No. 6/2/64-HI.]

S.O. 4347.—Whereas the Central Government is satisfied that the employees in each of the factories established or acquired by the Central Government since the 18th March, 1954 and under the control of the Ministry of Defence are in receipt of benefits substantially similar or superior to the benefits provided under the Employees' State Insurance Act, 1948 (34 of 1948);

Now, therefore, in exercise of the powers conferred by section 90 of the said Act, the Central Government hereby exempts each of the said factories from the operation of the Act.

[No. 6/2/64-HI.]

S.O. 4348.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby appoints Shri Abraham George to be an Inspector for the whole of the State of Mysore for the purposes of the said Act or of any Scheme framed thereunder, in relation to any establishment belonging to, or under the control of the Central Government, or in relation to any establishment connected with a railway company, a mine or an oil field or a controlled industry.

[No. 20(66)/64-PF-I.]

CORRIGENDUM

New Delhi, the 15th December 1964

S.O. 4349.—In the notification of the Government of India in the Department of Social Security, No. S.O. 3287, dated the 2nd September, 1964, published on page 3546 in Part II, Section 3, Sub-section (ii) of the Gazette of India, dated the 12th September, 1964, in the Schedule,—

I. In the entries under column 3,—

(i) against serial number 1,

(a) for 'Chengannoor' read 'Changannur'

(b) for 'Pallipuram Shertallay' read 'Pallippuram Shertallay'

(c) for 'Muttathukadvavu' read 'Muttathukadavu Shertallay'

(d) for 'Thaikkattuseri Shertallay' read 'Thaikkattusseri Shertallay';

(ii) against serial number 2,

(a) for "Thodupuzha" read "Thodopuzha".

II. In the entries under column 4,—

(i) against serial number 1,

(a) for 'Ravi and Sankar Metal Factory, Mundancav' read 'Ravi and Sankar Match Factory, Mundancavu'

(b) for 'Veeyana Trades and Industries, Manappuram' read 'Veeyans—Trades and Industries, Manappuram'.

[No. F. 6(53)/64-HI.]

SHAH AZIZ AHMAD, Dy. Secy.

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 16th December 1964

S.O. 4350.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the matter of an application under Section 33A of the said Act, from Shri Dukhi Sadhu (Harijan), under-ground Loader, Adjal II Colliery, which was received by the Central Government on the 7th December, 1964.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL: CALCUTTA

MISC. APPLICATION NO. 10 OF 1964

Under Section 33A of I. D. Act.

(Arising out of Reference No. 18 of 1963)

PARTIES:

Shri Dukhi Sadhu (Harijan) Underground Loader, Adjal II Colliery—Applicant.

Vs.

The Manager, Adjal II Colliery—Opposite Party.

PRESENT:

Shri L. P. Dave—Presiding Officer.

APPEARANCES:

On behalf of Applicant—Shri Ajit Mazumdar, Advocate.

On behalf of Opp. Party—Shri S. S. Mukherjee, Advocate.

STATE: West Bengal

INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant has filed this application alleging *inter alia* that the Opposite party had been guilty of contravention of the provisions of Section 33 of the Industrial Disputes Act; that the applicant was working as Underground Loader; that he was summarily dismissed by a letter dated 11th June 1964; that the Opposite Party has violated Section 33 of the Industrial Disputes Act as they had, during the pendency of Reference No. 18 of 1963, dismissed the applicant without obtaining express permission in writing from this Tribunal. The applicant, therefore, prayed that the Opposite party should be directed to reinstate the applicant with back wages.

3. The Opposite party, by its written statement, has contended *inter alia* that the applicant is not a workman concerned in Reference No. 18 of 1963 and as such he was not competent to file the present application which is not legally maintainable as the Opposite party has not contravened the provisions of Section 33 of the Industrial Disputes Act.

4. At the request of both parties, the above point has been heard as a preliminary point, namely, whether the applicant was a workman concerned in Reference No. 18 of 1963. It is not in dispute that the Government made the above reference to this Tribunal by an Order dated 11th November 1963 and that the Tribunal gave its award on 28th August 1964. It is also not in dispute that the present applicant was dismissed during the pendency of the above Reference. What is, however, in dispute is that the applicant was not a workman concerned in the above Reference and therefore the employers were not bound to obtain permission of the Tribunal under Section 33(2) of the Industrial Disputes Act before taking action against him and hence they had not contravened the provisions thereof by dismissing the workman without taking permission of the Tribunal.

5. Section 33(2) of the Industrial Disputes Act provides *inter alia* that during the pendency of any proceedings before a Tribunal in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to workman concerned in such dispute, discharge or punish, whether by dismissal or

otherwise, that workman for any misconduct not connected with the dispute. There is a proviso to this Sub-section which requires that the workman cannot be discharged or dismissed without payment of wages for one month and without an application being made by the employers to the Tribunal for approval of their action. Admittedly the applicant was not paid one month's wages nor was any permission or approval taken from this Tribunal. The employer's contention is that this Sub-section applies only where the workman who is to be dismissed is a workman concerned in the dispute regarding which proceedings are pending before a Tribunal. It was urged that the present applicant was not a workman concerned in the above Reference and hence no such permission was necessary. On the other hand, the applicant's contention is that all workmen employed by the employers should be deemed to be concerned in the dispute because the Reference was made as a dispute was existing between the employers and all their workmen. It was therefore argued that all workmen must be deemed to be concerned in the earlier Reference.

6. Before proceeding further, I may mention that Reference No. 18 of 1963 was for adjudication of the following questions, namely, 'whether the action of the management in dismissing Shri Murli Ahir was justified and if not, to what relief he was entitled'. It would thus appear that the dispute was regarding an individual workman. No doubt it was an industrial dispute, as it was taken up by other workmen also; but the workman concerned in that dispute would be only Murli Ahir and none else.

7. Reliance was placed on behalf of the applicant on the decisions of the Supreme Court in the case of *New India Motors, (Private) Ltd. Vs. Morris (K.T.)*, 1960 I LLJ 551. In that case the Supreme Court held that the expression 'concerned in such dispute' would not be limited only to such of the workmen who are directly concerned with the dispute in question and that the expression would include all workmen on whose behalf the dispute had been raised as well as those who would be bound by the award which may be made in the said dispute.

8. On the other hand, reliance was placed on behalf of the Opposite Party on two subsequent decisions of the Supreme Court namely (1) *Upper Ganges Valley Electricity Supply Company, Ltd., Vs. Srivastava*, 1963 I LLJ 237 and (2) *Digwadih Colliery Vs. Ramji Singh*, 1964 II LLJ 143. In the first of these cases, a dispute regarding the question of grant of annual increment to one individual workman was referred for adjudication. An appeal against the resulting award made on the Reference was pending. During the pendency of that appeal, a workman who was employed as a Fireman was dismissed and he thereupon made a complaint under Section 23 of the Industrial Disputes (Appellate Tribunal) Act. It may be noted here that the wording of Section 23 of the Industrial Disputes (Appellate Tribunal) Act is similar to the wording of Section 33 of the Industrial Disputes Act. It was held by the Supreme Court that this application was not maintainable as the applicant was not a workman concerned in the above appeal which related to an individual dispute of one employee. The Supreme Court's view appears to be that though all workmen may be considered to be a party to the dispute, they cannot all be said to be "concerned" in such dispute. Only the persons who are subject matter of the Reference would be the persons concerned in such dispute. In the above Supreme Court case, the person relating whose annual increment the matter was referred for adjudication was the workman concerned in the dispute.

9. The Digwadih Colliery case was a case under Section 33 of the Industrial Disputes Act. A person was dismissed from service during the pendency of a Reference before the Industrial Tribunal. It appears that the person who was dismissed was a clerk while the pending Reference was regarding Chaprasis and watchman and it was on this ground that the employers contended that the applicant was not a workman concerned in the earlier dispute. There was no evidence on this point and this clarification was made before the Supreme Court. The Supreme Court held that even if this clarification was not made before it, it was necessary for the applicant to satisfy the Tribunal by proving the nature of the dispute pending in the earlier Reference before asking the Tribunal to make a finding in his favour under Section 33(2) and in absence of any such evidence the Tribunal would not be justified in holding that Section 33(2) applied and have been contravened. If the contention of the applicant that all workmen must be deemed to be workmen concerned in the pending Reference were accepted, it would not be necessary for the Tribunal to go into the nature of the dispute pending in the earlier Reference.

10. It may be noted here that in the Upper Ganges case the matter referred for adjudication was regarding an increment of a particular workman named in the Reference. The Supreme Court observed that it was an individual dispute in respect of one employee and so the respondent in that case could not be said to be

concerned with that dispute. These remarks would apply to the facts of the present case because the Reference which was pending before this Tribunal was regarding the dismissal of an individual workman and the present applicant could not therefore be said to be concerned in that dispute.

11. Having carefully considered the matter, I think that the remarks made in the earlier Supreme Court case must be deemed to have been over-ruled by these two subsequent decisions. I would hold that the present applicant was not a workman concerned in the Reference which was pending before this Tribunal when he was dismissed. That being so, Section 33(2) was not contravened by the employers when they dismissed him during the pendency of the above Reference.

12. In the result, I hold that this application under Section 33A cannot be maintained and is dismissed.

I pass my award accordingly.

Dated, 30th November 1964.

Sd./- L. P. DAVE,
Presiding Officer.

[No. 6/5/63-LR.II.]

S.O. 4351.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta in the matter of an application under Section 33A of the said Act, from Shri Syed Ali, Fan Khalashi, Adjai II Colliery, which was received by the Central Government on the 7th December, 1964.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL: CALCUTTA

MISC. APPLICATION No. 11 of 1964

Under Section 33A of I.D. Act.

(Arising out of Reference No. 18 of 1963)

PARTIES:

Syed Ali, Fan Khalashi, Adjai II Colliery—*Application*

Vs.

The Manager, Adjai II Colliery—*Opposite Party*.

PRESENT:

Shri L. P. Dave—Presiding Officer.

APPEARANCES:

On behalf of Applicant—Shri Ajit Mazumdar, Advocate.

On behalf of Opposite Party—Shri S. S. Mukherjee, Advocate.

STATE: West Bengal.

INDUSTRY: Coal Mines

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant has filed this application alleging *inter alia* that the Opposite party had been guilty of contravention of the provisions of Section 33 of the Industrial Disputes Act; that the applicant was working as Fan Khalashi; that he was summarily dismissed by a letter dated 11th June 1964 that the Opposite party has violated Section 33 of the Industrial Disputes Act as they had, during the pendency of Reference No. 18 of 1963, dismissed the applicant without obtaining express permission in writing from this Tribunal. The applicant, therefore, prayed that the Opposite party should be directed to reinstate the applicant with back wages.

3. The Opposite party, by its written statement, has contended *inter alia* that the applicant is not a workman concerned in Reference No. 18 of 1963 and as such he was not competent to file the present application which is not legally maintainable as the Opposite party has not contravened the provisions of Section 33 of the Industrial Disputes Act.

4. At the request of both parties, the above point has been heard as a preliminary point, namely, whether the applicant was a workman concerned in Reference No. 18 of 1963. It is not in dispute that the Government made the above reference to this Tribunal by an Order dated 11th November 1963 and that the Tribunal gave its award on 28th September 1964. It is also not in dispute that the present applicant was dismissed during the pendency of the above Reference. What is, however, in dispute is that the applicant was not a workman concerned in the above Reference and therefore the employers were not bound to obtain permission of the Tribunal under Section 33(2) of the Industrial Disputes Act before taking action against him and hence they had not contravened the provisions thereof by dismissing the workman without taking permission of the Tribunal.

5. Section 33(2) of the Industrial Disputes Act provides *inter alia* that during the pendency of any proceedings before a Tribunal in respect of an industrial dispute, the employer may in accordance with the Standing Orders applicable to workman concerned in such dispute, discharge or punish, whether by dismissal or otherwise, that workman for any misconduct not connected with the dispute. There is a proviso to this Sub-section which requires that the workman cannot be discharged or dismissed without payment of wages for one month and without an application being made by the employers to the Tribunal for approval of their action. Admittedly the applicant was not paid one month's wages nor was any permission or approval taken from this Tribunal. The employer's contention is that this Sub-section applies only where the workman who is to be dismissed is a workman concerned in the dispute regarding which proceedings are pending before a Tribunal. It was urged that the present applicant was not a workman concerned in the above Reference and hence no such permission was necessary. On the other hand, the applicant's contention is that all workmen employed by the employers should be deemed to be concerned in the dispute because the Reference was made as a dispute was existing between the employers and all their workmen. It was therefore argued that all workmen must be deemed to be concerned in the earlier Reference.

6. Before proceeding further, I may mention that Reference No. 18 of 1963 was for adjudication of the following questions, namely, 'whether the action of the management in dismissing Shri Murli Ahir was justified and if not, to what relief he was entitled'. It would thus appear that the dispute was regarding an individual workman. No doubt it was an industrial dispute, as it was taken up by other workmen also; but the workman concerned in that dispute would be only Murli Ahir and none else.

7. Reliance was placed on behalf of the applicant on the decisions of the Supreme Court in the case of New India Motors, (Private) Ltd., Vs. Morris (K.T.), 1960 1 LLJ 551. In that case the Supreme Court held that the expression 'concerned in such dispute' would not be limited only to such of the workmen who are directly concerned with the dispute in question and that the expression would include all workmen on whose behalf the dispute had been raised as well as those who would be bound by the award which may be made in the said dispute.

8. On the other hand, reliance was placed on behalf of the Opposite Party on two subsequent decisions of the Supreme Court namely (1) Upper Ganges Valley Electricity Supply Company, Ltd., Vs. Srivastava, 1963 1 LLJ 237 and (2) Digwadih Colliery Vs. Ramji Singh, 1964 11 LLJ 143. In the first of these cases, a dispute regarding the question of grant of annual increment to one individual workman was referred for adjudication. An appeal against the resulting award made on the Reference was pending. During the pendency of that appeal, a workman who was employed as a Fireman was dismissed and he thereupon made a complaint under Section 23 of the Industrial Disputes (Appellate Tribunal) Act. It may be noted here that the wording of Section 23 of the Industrial Disputes (Appellate Tribunal) Act is similar to the wording of Section 33 of the Industrial Disputes Act. It was held by the Supreme Court that this application was not maintainable as the applicant was not a workman concerned in the above appeal which related to an individual dispute of one employee. The Supreme Court's view appears to be that though all workmen may be considered to be a party to the dispute, they cannot all be said to be "concerned" in such dispute.

Only the persons who are subject matter of the Reference would be the persons concerned in such dispute. In the above Supreme Court case, the person relating whose annual increment the matter was referred for adjudication was the workman concerned in the dispute.

9. The Digwadh Colliery case was a case under Section 33 of the Industrial Disputes Act. A person was dismissed from service during the pendency of a Reference before the Industrial Tribunal. It appears that the person who was dismissed was a clerk while the pending Reference was regarding Chaprasis and watchman and it was on this ground that the employers contended that the applicant was not a workman concerned in the earlier dispute. There was no evidence on this point and this clarification was made before the Supreme Court. The Supreme Court held that even if this clarification was not made before it, it was necessary for the applicant to satisfy the Tribunal by proving the nature of the dispute pending in the earlier Reference before asking the Tribunal to make a finding in his favour under Section 33(2) and in absence of any such evidence the Tribunal would not be justified in holding that Section 33(2) applied and have been contravened. If the contention of the applicant that all workmen must be deemed to be workmen concerned in the pending Reference were accepted, it would not be necessary for the Tribunal to go into the nature of the dispute pending in the earlier Reference.

10. It may be noted here that in the Upper Ganges case the matter referred for adjudication was regarding an increment of a particular workman named in the Reference. The Supreme Court observed that it was an individual dispute in respect of one employee and so the respondent in that case could not be said to be concerned with that dispute. These remarks would apply to the facts of the present case because the Reference which was pending before this Tribunal was regarding the dismissal of an individual workman and the present applicant could not therefore be said to be concerned in that dispute.

11. Having carefully considered the matter, I think that the remarks made in the earlier Supreme Court case must be deemed to have been over-ruled by these two subsequent decisions. I would hold that the present applicant was not a workman concerned in the Reference which was pending before this Tribunal when he was dismissed. That being so, Section 33(2) was not contravened by the employers when they dismissed him during the pendency of the above Reference.

12. In the result, I hold that this application under Section 33A cannot be maintained and is dismissed.

I pass my award accordingly.

Dated, the 30th November, 1964.

Sd./- L. P. DAVE,
Presiding Officer.

[No. 6/5/63-LR.II.]

S.O. 4352.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the matter of an application under Section 33A of the said Act, from Shri Brij Mohan, underground Loader, Adjai II Colliery, which was received by the Central Government on the 7th December 1964.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL: CALCUTTA

MISC. APPLICATION No. 12 OF 1964

Under Section 33A of I.D. Act

(Arising out of Reference No. 18 of 1963)

PARTIES:

Shri Brij Mohan, Underground Loader, Adjai II Colliery—Applicant.

Vs.

The Manager, Adjai II Colliery—Opposite Party.

PRESENT:

Shri L. P. Dave—*Presiding Officer.*

APPEARANCES:

On behalf of Applicant—Shri Ajit Mazumdar, Advocate.

On behalf of Opposite Party Shri S. S. Mukherjee, Advocate.

STATE: West Bengal.

INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant has filed this application alleging *inter alia* that the Opposite party had been guilty of contravention of the provisions of Section 33 of the Industrial Disputes Act; that the applicant was working as Underground Loader; that he was summarily dismissed by a letter dated 11th June 1964; that the Opposite party has violated Section 33 of the Industrial Disputes Act as they had, during the pendency of Reference No. 18 of 1963, dismissed the applicant without obtaining express permission in writing from this Tribunal. The applicant, therefore, prayed that the Opposite party should be directed to reinstate the applicant with back wages.

3. The Opposite party, by its written statement, has contended *inter alia* that the applicant is not a workman concerned in Reference No. 18 of 1963 and as such he was not competent to file the present application which is not legally maintainable as the Opposite party has not contravened the provisions of Section 33 of the Industrial Disputes Act.

4. At the request of both parties, the above point has been heard as a preliminary point, namely, whether the applicant was a workman concerned in Reference No. 18 of 1963. It is not in dispute that the Government made the above reference to this Tribunal by an Order dated 11th November 1963 and that the Tribunal gave its award on 28th August 1964. It is also not in dispute that the present applicant was dismissed during the pendency of the above Reference. What is, however, in dispute is that the applicant was not a workman concerned in the above Reference and therefore the employers were not bound to obtain permission of the Tribunal under Section 33(2) of the Industrial Disputes Act before taking action against him and hence they had not contravened the provisions thereof by dismissing the workman without taking permission of the Tribunal.

5. Section 33(2) of the Industrial Disputes Act provides *inter alia* that during the pendency of any proceedings before a Tribunal in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to workman concerned in such dispute, discharge or punish, whether by dismissal or otherwise, that workman for any misconduct not connected with the dispute. There is a proviso to this Sub-section which requires that the workman cannot be discharged or dismissed without payment of wages for one month and without an application being made by the employers to the Tribunal for approval of their action. Admittedly the applicant was not paid one month's wages nor was any permission or approval taken from this Tribunal. The employer's contention is that this Sub-section applies only where the workman who is to be dismissed is a workman concerned in the dispute regarding which proceedings are pending before a Tribunal. It was urged that the present applicant was not a workman concerned in the above Reference and hence no such permission was necessary. On the other hand, the applicant's contention is that all workmen employed by the employers should be deemed to be concerned in the dispute because the Reference was made as a dispute was existing between the employers and all their workmen. It was therefore argued that all workmen must be deemed to be concerned in the earlier Reference.

6. Before proceeding further, I may mention that Reference No. 18 of 1963 was for adjudication of the following questions, namely, 'whether the action of the management in dismissing Shri Murli Ahir was justified and if not, to what relief he was entitled'. It would thus appear that the dispute was regarding an individual workman. No doubt it was an industrial dispute, as it was taken up by other workmen also; but the workman concerned in that dispute would be only Murli Ahir and none else.

7. Reliance was placed on behalf of the applicant on the decisions of the Supreme Court in the case of New India Motors, (Private) Ltd., Vs. Morris (K.T.),

1969 I LLJ 551. In that case the Supreme Court held that the expression 'concerned in such dispute' would not be limited only to such of the workmen who are directly concerned with the dispute in question and that the expression would include all workmen on whose behalf the dispute had been raised as well as those who would be bound by the award which may be made in the said dispute.

8. On the other hand, reliance was placed on behalf of the Opposite Party on two subsequent decisions of the Supreme Court namely (1) Upper Ganges Valley Electricity Supply Company, Ltd., Vs. Srivastava, 1963 I LLJ 237 and (2) Digwadih Colliery Vs. Ramji Singh, 1964 II LLJ 143. In the first of these cases, a dispute regarding the question of grant of annual increment to one individual workman was referred for adjudication. An appeal against the resulting award made on the Reference was pending. During the pendency of that appeal, a workman who was employed as a Fireman was dismissed and he thereupon made a complaint under Section 23 of the Industrial Disputes (Appellate Tribunal) Act. It may be noted here that the wording of Section 23 of the Industrial Disputes (Appellate Tribunal) Act is similar to the wording of Section 33 of the Industrial Disputes Act. It was held by the Supreme Court that this application was not maintainable as the applicant was not a workman concerned in the above appeal which related to an individual dispute of one employee. The Supreme Court's view appears to be that though all workmen may be considered to be a party to the dispute, they cannot all be said to be "concerned" in such dispute. Only the persons who are subject matter of the Reference would be the persons concerned in such dispute. In the above Supreme Court case, the person relating whose annual increment the matter was referred for adjudication was the workman concerned in the dispute.

9. The Digwadih Colliery case was a case under Section 33 of the Industrial Disputes Act. A person was dismissed from service during the pendency of a Reference before the Industrial Tribunal. It appears that the person who was dismissed was a clerk while the pending Reference was regarding Chaprasis and watchman and it was on this ground that the employers contended that the applicant was not a workman concerned in the earlier dispute. There was no evidence on this point and this clarification was made before the Supreme Court. The Supreme Court held that even if this clarification was not made before it it was necessary for the applicant to satisfy the Tribunal by proving the nature of the dispute pending in the earlier Reference before asking the Tribunal to make a finding in his favour under Section 33(2) and in absence of any such evidence the Tribunal would not be justified in holding that Section 33(2) applied and have been contravened. If the contention of the applicant that all workmen must be deemed to be workmen concerned in the pending Reference were accepted, it would not be necessary for the Tribunal to go into the nature of the dispute pending in the earlier Reference.

10. It may be noted here that in the Upper Ganges case the matter referred for adjudication was regarding an increment of a particular workman named in the Reference. The Supreme Court observed that it was an individual dispute in respect of one employee and so the respondent in that case could not be said to be concerned with that dispute. These remarks would apply to the facts of the present case because the Reference which was pending before this Tribunal was regarding the dismissal of an individual workman and the present applicant could not therefore be said to be concerned in that dispute.

11. Having carefully considered the matter, I think that the remarks made in the earlier Supreme Court case must be deemed to have been over-ruled by these two subsequent decisions. I would hold that the present applicant was not a workman concerned in the Reference which was pending before this Tribunal when he was dismissed. That being so, Section 33(2) was not contravened by the employer when they dismissed him during the pendency of the above Reference.

12. In the result, I hold that this application under Section 33A cannot be maintained and is dismissed.

I pass my award accordingly.

Sd./- L. P. DAVE,

Presiding Officer.

Dated, the 30th November, 1964.

[No. 6/5/63-LR.II.]

S.O. 4353.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the matter of an application under Section 33A of the said Act, from Shri Sidhnath Ahir Trammer, Adjay II Colliery which was received by the Central Government on the 7th December 1964.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL; CALCUTTA
MJSC. APPLICATION No. 13 OF 1964

Under Section 33A of I.D. Act.

(Arising out of Reference No. 18 of 1963)

PARTIES:

Shri Sidhnath Ahir, Trammer, Adjay II Colliery—Applicant.

Vs.

Manager, Adjal II Colliery—Opposite Party.

PRESENT:

Shri L. P. Dave—Presiding Officer.

APPEARANCES:

On behalf of Applicant—Shri Ajit Mazumdar, Advocate.

On behalf of Opposite Party—Shri S. S. Mukherjee, Advocate.

STATE: West Bengal.

INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant has filed this application alleging *inter alia* that the Opposite party had been guilty of contravention of the provisions of Section 33 of the Industrial Disputes Act; that the applicant was working as Trammer; that he was summarily dismissed by a letter dated 11th June 1964; that the Opposite party has violated Section 33 of the Industrial Disputes Act as they had, during the pendency of Reference No. 18 of 1963, dismissed the applicant without obtaining express permission in writing from this Tribunal. The applicant, therefore, prayed that the Opposite party should be directed to reinstate the applicant with back wages.

3. The Opposite party, by its written statement, has contended *inter alia* that the applicant is not a workman concerned in Reference No. 18 of 1963 and as such he was not competent to file the present application which is not legally maintainable as the Opposite party has not contravened the provisions of Section 33 of the Industrial Disputes Act.

4. At the request of both parties, the above point has been heard as a preliminary point, namely, whether the applicant was a workman concerned in Reference No. 18 of 1963. It is not in dispute that the Government made the above reference to this Tribunal by an Order dated 11th November 1963 and that the Tribunal gave its award on 28th August 1964. It is also not in dispute that the present applicant was dismissed during the pendency of the above Reference. What is, however, in dispute is that the applicant was not a workman concerned in the above Reference and therefore the employers were not bound to obtain permission of the Tribunal under Section 33(2) of the Industrial Disputes Act before taking action against him and hence they had not contravened the provisions thereof by dismissing the workman without taking permission of the Tribunal.

5. Section 33(2) of the Industrial Disputes Act provides *inter alia* that during the pendency of any proceedings before a Tribunal in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to workman concerned in such dispute, discharge or punish, whether by dismissal or otherwise, that workman for any misconduct not connected with the dispute.

There is a proviso to this Sub-section which requires that the workman cannot be discharged or dismissed without payment of wages for one month and without an application being made by the employers to the Tribunal for approval of their action. Admittedly the applicant was not paid one month's wages nor was any permission or approval taken from this Tribunal. The employers' contention is that this Sub-section applies only where the workman who is to be dismissed is a workman concerned in the dispute regarding which proceedings are pending before a Tribunal. It was urged that the present applicant was not a workman concerned in the above Reference and hence no such permission was necessary. On the other hand, the applicant's contention is that all workmen employed by the employers should be deemed to be concerned in the dispute because the Reference was made as a dispute was existing between the employers and all their workmen. It was therefore argued that all workmen must be deemed to be concerned in the earlier Reference.

6. Before proceeding further, I may mention that Reference No. 18 of 1963 was for adjudication of the following question, namely, 'whether the action of the management in dismissing Shri Murli Ahir was justified and if not, to what relief he was entitled'. It would thus appear that the dispute was regarding an individual workman. No doubt it was an industrial dispute, as it was taken up by other workmen also; but the workman concerned in that dispute would be only Murli Ahir and none else.

7. Reliance was placed on behalf of the applicant on the decisions of the Supreme Court in the case of *New India Motors (Private) Ltd. Vs. Morris (K.T.)* 1960 I LLJ 551. In that case the Supreme Court held that the expression 'concerned in such dispute' would not be limited only to such of the workmen who are directly concerned with the dispute in question and that the expression would include all workmen on whose behalf the dispute had been raised as well as those who would be bound by the award which may be made in the said dispute.

8. On the other hand, reliance was placed on behalf of the Opposite Party on two subsequent decisions of the Supreme Court namely (1) *Upper Ganges Valley Electricity Supply Company, Ltd., Vs. Srivastava* 1963 I LLJ 237 and (2) *Digwadih Colliery Vs. Ramji Singh*, 1964 II LLJ 143. In the first of these cases, a dispute regarding the question of grant of annual increment to one individual workman was referred for adjudication. An appeal against the resulting award made on the Reference was pending. During the pendency of that appeal, a workman who was employed as a Fireman was dismissed and he thereupon made a complaint under Section 23 of the Industrial Disputes (Appellate Tribunal) Act. It may be noted here that the wording of Section 23 of the Industrial Disputes (Appellate Tribunal) Act is similar to the wording of Section 33 of the Industrial Disputes Act. It was held by the Supreme Court that this application was not maintainable as the applicant was not a workman concerned in the above appeal which related to an individual dispute of one employee. The Supreme Court's view appears to be that though all workmen may be considered to be a party to the dispute, they cannot all be said to be "concerned" in such dispute. Only the persons who are subject matter of the Reference would be the persons concerned in such dispute. In the above Supreme Court case, the person relating to whose annual increment the matter was referred for adjudication was the workman concerned in the dispute.

9. The *Digwadih Colliery* case was a case under Section 33 of the Industrial Disputes Act. A person was dismissed from service during the pendency of a Reference before the Industrial Tribunal. It appears that the person who was dismissed was a clerk while the pending Reference was regarding Chaprasis and watchman and it was on this ground that employers contended that the applicant was not a workman concerned in the earlier dispute. There was no evidence on this point and this clarification was made before the Supreme Court. The Supreme Court held that even if this clarification was not made before it, it was necessary for the applicant to satisfy the Tribunal by proving the nature of the dispute pending in the earlier Reference before asking the Tribunal to make a finding in his favour under Section 33(2) and in absence of any such evidence the Tribunal would not be justified in holding that Section 33(2) applied and have been contravened. If the contention of the applicant that all workmen must be deemed to be workmen concerned in the pending Reference were accepted, it would not be necessary for the Tribunal to go into the nature of the dispute pending in the earlier Reference.

10. It may be noted here that in the *Upper Ganges* case the matter referred for adjudication was regarding an increment of a particular workman named in the Reference. The Supreme Court observed that it was an individual dispute in respect of one employee and so the respondent in that case could not

be said to be concerned with that dispute. These remarks would apply to the facts of the present case because the Reference which was pending before this Tribunal was regarding the dismissal of an individual workman and the present applicant could not therefore be said to be concerned in that dispute.

11. Having carefully considered the matter, I think that the remarks made in the earlier Supreme Court case must be deemed to have been over-ruled by these two subsequent decisions. I would hold that the present applicant was not a workman concerned in the Reference which was pending before this Tribunal when he was dismissed. That being so, Section 33(2) was not contravened by the employers when they dismissed him during the pendency of the above Reference.

12. In the result, I hold that this application under Section 33A cannot be maintained and is dismissed.

I pass my award accordingly.

Sd/- L. P. DAVE.
Presiding Officer.

Dated, the 30th November, 1964.

[No. 6/5/63-LRII.]

S.O. 4354.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the matter of an application under Section 33A of the said Act, from Shri Salku Rajbhar, underground Loader, Adjai II Colliery which was received by the Central Government on the 7th December 1964.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL: CALCUTTA
MISC. APPLICATION No. 14 OF 1964

Under Section 33A of I.D. Act.

(Arising out of Reference No. 18 of 1963)

PARTIES:

Shri Salku Rajbhar, Underground Loader, Adjai II Colliery—Applicant.

Vs.

The Manager, Adjai II Colliery—Opposite Party.

PRESENT:

Shri L. P. Dave—Presiding Officer.

APPEARANCES:

On behalf of Applicant—Shri Ajit Mazumdar, Advocate

On behalf of Opposite Party—Shri S. S. Mukherjee, Advocate.

STATE: West Bengal.

INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant has filed this application alleging *inter alia* that the Opposite party had been guilty of contravention of the provisions of Section 33 of the Industrial Disputes Act; that the applicant was working as Underground Loader; that he was summarily dismissed by a letter dated 11th June 1964; that the Opposite party has violated Section 33 of the Industrial Disputes Act as they had, during the pendency of Reference No. 18 of 1963, dismissed the applicant without obtaining express permission in writing from this Tribunal. The applicant, therefore, prayed that the Opposite party should be directed to reinstate the applicant with back wages.

3. The Opposite party, by its written statement, has contended *inter alia* that the applicant is not a workman concerned in Reference No. 18 of 1963 and as such he was not competent to file the present application which is not legally maintainable as the Opposite party has not contravened the provisions of Section 33 of the Industrial Disputes Act.

4. At the request of both parties, the above point has been heard as a preliminary point, namely, whether the applicant was a workman concerned in Reference No. 18 of 1963. It is not in dispute that the Government made the above reference to this Tribunal by an Order dated 11th November 1963 and that the Tribunal gave its award on 28th August 1964. It is also not in dispute that the present applicant was dismissed during the pendency of the above Reference. What is, however, in dispute is that the applicant was not a workman concerned in the above Reference and therefore the employers were not bound to obtain permission of the Tribunal under Section 33(2) of the Industrial Disputes Act before taking action against him and hence they had not contravened the provisions thereof by dismissing the workman without taking permission of the Tribunal.

5. Section 33(2) of the Industrial Disputes Act provides *inter alia* that during the pendency of any proceedings before a Tribunal in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to workman concerned in such dispute, discharge or punish, whether by dismissal or otherwise, that workman for any misconduct not connected with the dispute. There is a proviso to this Sub-section which requires that the workman cannot be discharged or dismissed without payment of wages for one month and without an application being made by the employers to the Tribunal for approval of their action. Admittedly the applicant was not paid one month's wages nor was any permission or approval taken from this Tribunal. The employer's contention is that this Sub-section applies only where the workman who is to be dismissed is a workman concerned in the dispute regarding which proceedings are pending before a Tribunal. It was urged that the present applicant was not a workman concerned in the above Reference and hence no such permission was necessary. On the other hand, the applicant's contention is that all workmen employed by the employers should be deemed to be concerned in the dispute because the Reference was made as a dispute was existing between the employers and all their workmen. It was therefore argued that all workmen must be deemed to be concerned in the earlier Reference.

6. Before proceeding further, I may mention that Reference No. 18 of 1963 was for adjudication of the following questions, namely, 'whether the action of the management in dismissing Shri Murli Ahir was justified and if not, to what relief he was entitled'. It would thus appear that the dispute was regarding an individual workman. No doubt it was an industrial dispute, as it was taken up by other workmen also; but the workman concerned in that dispute would be only Murli Ahir and none else.

7. Reliance was placed on behalf of the applicant on the decisions of the Supreme Court in the case of New India Motors, (Private) Ltd. Vs. Morris (K.T.), 1960 I LLJ 551. In that case the Supreme Court held that the expression 'concerned in such dispute' would not be limited only to such of the workmen who are directly concerned with the dispute in question and that the expression would include all workmen on whose behalf the dispute had been raised as well as those who would be bound by the award which may be made in the said dispute.

8. On the other hand, reliance was placed on behalf of the Opposite Party on two subsequent decisions of the Supreme Court namely (1) Upper Ganges Valley Electricity Supply Company, Ltd., Vs. Srivastava, 1963 I LLJ 237 and (2) Digwadih Colliery Vs. Ramji Singh, 1964 II LLJ 143. In the first of these cases, a dispute regarding the question of grant of annual increment to one individual workman was referred for adjudication. An appeal against the resulting award made on the Reference was pending. During the pendency of that appeal, a workman who was employed as a Fireman was dismissed and he thereupon made a complaint under Section 23 of the Industrial Disputes (Appellate Tribunal) Act. It may be noted here that the wording of Section 23 of the Industrial Disputes (Appellate Tribunal) Act is similar to the wording of Section 33 of the Industrial Disputes Act. It was held by the Supreme Court that this application was not maintainable as the applicant was not a workman concerned in the above appeal which related to an individual dispute of one employee. The Supreme Court's view appears to be that though all workmen may be considered to be a party to the dispute, they cannot all be said to be "concerned" in such dispute. Only the

persons who are subject matter of the Reference would be the persons concerned in such dispute. In the above Supreme Court case, the person relating to whose annual increment the matter was referred for adjudication was the workman concerned in the dispute.

9. The Digwadih Colliery case was a case under Section 33 of the Industrial Disputes Act. A person was dismissed from service during the pendency of a Reference before the Industrial Tribunal. It appears that the person who was dismissed was a clerk while the pending Reference was regarding Chaprasis and watchman and it was on this ground that the employers contended that the applicant was not a workman concerned in the earlier dispute. There was no evidence on this point and this clarification was made before the Supreme Court. The Supreme Court held that even if this clarification was not made before it, it was necessary for the applicant to satisfy the Tribunal by proving the nature of the dispute pending in the earlier Reference before asking the Tribunal to make a finding in his favour under Section 33(2) and in absence of any such evidence the Tribunal would not be justified in holding that Section 33(2) applied and have been contravened. If the contention of the applicant that all workmen must be deemed to be workmen concerned in the pending Reference were accepted, it would not be necessary for the Tribunal to go into the nature of the dispute pending in the earlier Reference.

10. It may be noted here that in the Upper Ganges case the matter referred for adjudication was regarding an increment of a particular workman named in the Reference. The Supreme Court observed that it was an individual dispute in respect of one employee and so the respondent in that case could not be said to be concerned with that dispute. These remarks would apply to the facts of the present case because the Reference which was pending before this Tribunal was regarding the dismissal of an individual workman and the present applicant could not therefore be said to be concerned in that dispute.

11. Having carefully considered the matter, I think that the remarks made in the earlier Supreme Court case must be deemed to have been over-ruled by these two subsequent decisions. I would hold that the present applicant was not a workman concerned in the Reference which was pending before this Tribunal when he was dismissed. That being so, Section 33(2) was not contravened by the employers when they dismissed him during the pendency of the above Reference.

12. In the result I hold that this application under Section 33A cannot be maintained and is dismissed.

I pass my award accordingly.

Sd./- L. P. DAVE,
Presiding Officer.

Dated, the 30th November, 1964.

[No. 6/5/63-LR.II.]

S.O. 4355.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the matter of an application under section 33A of the said Act, from Shri Chouti Ahir, Underground Loader, Adjal II Colliery which was received by the Central Government on the 7th December 1964.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

Misc. APPLICATION No. 15 of 1964

Under Section 33A of I.D. Act

(Arising out of Reference No. 18 of 1963)

PARTIES:

Shri Chouti Ahir, Underground Loader, Adjal II Colliery—*Applicant*.

Vs.

The Manager, Adjal II Colliery—*Opposite Party*.

PRESENT:

Shri L. P. Dave—*Presiding Officer.*

APPEARANCES:

On behalf of Applicant—Shri Ajit Mazumdar, Advocate.

On behalf of Opposite Party—Shri S. S. Mukherjee, Advocate.

STATE: West Bengal

INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant has filed this application alleging *inter alia* that the Opposite party had been guilty of contravention of the provisions of Section 33 of the Industrial Disputes Act; that the applicant was working as Underground Loader; that he was summarily dismissed by a letter dated 11th June 1964; that the Opposite party has violated Section 33 of the Industrial Disputes Act as they had, during the pendency of Reference No. 18 of 1963, dismissed the applicant without obtaining express permission in writing from this Tribunal. The applicant, therefore, prayed that the Opposite party should be directed to reinstate the applicant with back wages.

3. The Opposite party, by its written statement, has contended *inter alia* that the applicant is not a workman concerned in Reference No. 18 of 1963 and as such he was not competent to file the present application which is not legally maintainable as the Opposite party has not contravened the provisions of Section 33 of the Industrial Disputes Act.

4. At the request of both parties, the above point has been heard as preliminary point, namely, whether the applicant was a workman concerned in Reference No. 18 of 1963. It is not in dispute that the Government made the above reference to this Tribunal by an Order dated 11th November 1963 and that the Tribunal gave its award on 28th August 1964. It is also not in dispute that the present applicant was dismissed during the pendency of the above Reference. What is, however, in dispute is that the applicant was not a workman concerned in the above Reference and therefore the employers were not bound to obtain permission of the Tribunal under Section 33(2) of the Industrial Disputes Act before taking action against him and hence they had not contravened the provisions thereof by dismissing the workman without taking permission of the Tribunal.

5. Section 33(2) of the Industrial Disputes Act provides *inter alia* that during the pendency of any proceedings before a Tribunal in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to workman concerned in such dispute, discharge or punish, whether by dismissal or otherwise, that workman for any misconduct not connected with the dispute. There is a proviso to this Sub-section which requires that the workman cannot be discharged or dismissed without payment of wages for one month and without an application being made by the employers to the Tribunal for approval of their action. Admittedly the applicant was not paid one month's wages nor was any permission or approval taken from this Tribunal. The employer's contention is that this Sub-section applies only where the workman who is to be dismissed is a workman concerned in the dispute regarding which proceedings are pending before a Tribunal. It was urged that the present applicant was not a workman concerned in the above Reference and hence no such permission was necessary. On the other hand, the applicant's contention is that all workmen employed by the employers should be deemed to be concerned in the dispute because the Reference was made as a dispute was existing between the employers and all their workmen. It was therefore argued that all workmen must be deemed to be concerned in the earlier Reference.

6. Before proceeding further, I may mention that Reference No. 18 of 1963 was for adjudication of the following questions, namely, 'whether the action of the management in dismissing Shri Murli Ahir was justified and if not, to what relief he was entitled?' It would thus appear that the dispute was regarding an individual workman. No doubt it was an industrial dispute, as it was taken up by other workmen also; but the workmen concerned in that dispute would be only Murli Ahir and none else.

7. Reliance was placed on behalf of the applicant on the decisions of the Supreme Court in the case of New India, Motors (Private) Ltd. Vs. Morris (K.T.), 1960 1 LLJ 551. In that case the Supreme Court held that the expression 'concerned in such dispute' would not be limited only to such of the workmen who are directly concerned with the dispute in question and that the expression would include all workmen on whose behalf the dispute had been raised as well as those who would be bound by the award which may be made in the said dispute.

8. On the other hand, reliance was placed on behalf of the Opposite Party on two subsequent decisions of the Supreme Court namely (1) Upper Ganges Valley Electricity Supply Company, Ltd., Vs. Srivastava, 1963 1 LLJ 237 and (2) Digwadih Colliery Vs. Ramji Singh, 1964 11 LLJ 143. In the first of these cases, a dispute regarding the question of grant of annual increment to one individual workman was referred for adjudication. An appeal against the resulting award made on the Reference was pending. During the pendency of that appeal, a workman who was employed as a Fireman was dismissed and he thereupon made a complaint under Section 23 of the Industrial Disputes (Appellate Tribunal) Act. It may be noted here that the wording of Section 23 of the Industrial Disputes (Appellate Tribunal) Act is similar to the wording of Section 33 of the Industrial Disputes Act. It was held by the Supreme Court that this application was not maintainable as the applicant was not a workman concerned in the above appeal which related to an individual dispute of one employee. The Supreme Court's view appears to be that though all workmen may be considered to be a party to the dispute, they cannot all be said to be "concerned" in such dispute. Only the persons who are subject matter of the Reference would be the persons concerned in such dispute. In the above Supreme Court case, the person relating whose annual increment the matter was referred for adjudication was the workman concerned in the dispute.

9. The Digwadih Colliery case was a case under Section 33 of the Industrial Disputes Act. A person was dismissed from service during the pendency of a Reference before the Industrial Tribunal. It appears that the person who was dismissed was a clerk while the pending Reference was regarding Chaprasis and watchman and it was on this ground that the employers contended that the applicant was not a workman concerned in the earlier dispute. There was no evidence on this point and this clarification was made before the Supreme Court. The Supreme Court held that even if this clarification was not made before it, it was necessary for the applicant to satisfy the Tribunal by proving the nature of the dispute pending in the earlier Reference before asking the Tribunal to make a finding in his favour under Section 33(2) and in absence of any such evidence the Tribunal would not be justified in holding that Section 33(2) applied and have been contravened. If the contention of the applicant that all workmen must be deemed to be workmen concerned in the pending Reference were accepted, it would not be necessary for the Tribunal to go into the nature of the dispute pending in the earlier Reference.

10. It may be noted here that in the Upper Ganges case the matter referred for adjudication was regarding an increment of a particular workman named in the Reference. The Supreme Court observed that it was an individual dispute in respect of one employee and so the respondent in that case could not be said to be concerned with that dispute. These remarks would apply to the facts of the present case because the Reference which was pending before this Tribunal was regarding the dismissal of an individual workman and the present applicant could not therefore be said to be concerned in that dispute.

11. Having carefully considered the matter, I think that the remarks made in the earlier Supreme Court case must be deemed to have been over-ruled by these two subsequent decisions. I would hold that the present applicant was not a workman concerned in the Reference which was pending before this Tribunal when he was dismissed. That being so, Section 33(2) was not contravened by the employers when they dismissed him during the pendency of the above Reference.

12. In the result, I hold that this application under Section 33A cannot be maintained and is dismissed.

I pass my award accordingly.

(Sd.) L. P. DAVE,
Presiding Officer.

Dated, the 30th November, 1964.

[No. 6/5/63-LRII.1]

S.O. 4356.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta in the matter of an application under Section 33A of the said Act from Shri Muni Missir, Tugger Khalashi, Babisole Colliery which was received by the Central Government on the 7th December, 1964.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

MISC. APPLICATION NO. 16 OF 1964

Under Section 33A of I.D. Act

(Arising out of Reference No. 45 of 1964).

PARTIES:

Shri Muni Missir, Tugger Khalashi, Babisole Colliery.—Applicant.

Vs.

The Manager, Babisole colliery.—Opposite Party.

PRESENT:

Shri L. P. Dave.—Presiding Officer.

APPEARANCES:

On behalf of Applicant.—Shri Kalyan Roy, Vice-President, Colliery Mazdoor Sabha.

On behalf of Opp. Party.—Shri S. K. Singh, Welfare Officer.

STATE: West Bengal.

INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant filed the present application alleging that the Opp. party by dismissing him during the pendency of Reference No. 45 of 1964 without obtaining permission of the Tribunal had contravened the provisions of Section 33 of the Industrial Disputes Act.

3. At the hearing, the Opposite party raised a preliminary objection that the applicant was not a workman concerned in the above Reference and hence the case was not covered by Section 33(2) of the Industrial Disputes Act and no application was necessary for approval of the management's action.

4. This question has been considered by me in Misc. Application Nos. 10, 11, 12, 13, 14, and 15 of 1964 and in view of the Rulings of the Supreme Court in the cases of (1) Upper Ganges Valley Electricity Supply Company, Ltd., Vs. Srivastava, 1963 1 I.L.J. 237 and (2) Digwadih Colliery Vs. Ramji Singh, 1964 11 I.L.J. 143, I am satisfied that the present applicant cannot be said to be a workman concerned in Reference No. 45 of 1964. That being so, the employers have not committed a breach of Section 33(2) of the Industrial Disputes Act by dismissing him during the pendency of the above Reference without asking for the approval of this Tribunal. The application therefore fails and is dismissed.

I pass my award accordingly.

Sd./- L. P. DAVE,

Presiding Officer.

Dated, the 3rd December, 1964

[No. 6/58/64-LR-II-II.]

S.O. 4357.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the matter of an application under Section 33A of the said Act, from Shri Ram Kewal Bhar, Timber Mistry, Babisole Colliery which was received by the Central Government on the 7th December 1964.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

MISC. APPLICATION No. 17 OF 1964

Under Section 33A of I.D. Act

(Arising out of Reference No. 45 of 1964)

PARTIES:

Shri Ram Kewal Bhar, Timber Mistry, Babisole Colliery—*Applicant.*

Vs.

The Manager, Babisole Colliery—*Opposite Party.*

PRESENT:

Shri L. P. Dave—*Presiding Officer.*

APPEARANCES:

On behalf of Applicant—Shri Kalyan Roy, Vice-President, Colliery Mazdoor Sabha.*On behalf of Opposite Party*—Shri S. K. Singh, Welfare Officer.

STATE: West Bengal.

INDUSTRY: Coal Mine.

AWARD

This is an application under Section 33A of the Industrial Disputes Act.

2. The applicant filed the present application alleging that the Opposite party by dismissing him during the pendency of Reference No. 45 of 1964 without obtaining permission of the Tribunal had contravened the provisions of Section 33 of the Industrial Disputes Act.

3. At the hearing, the Opposite party raised a preliminary objection that the applicant was not a workman concerned in the above Reference and hence the case was not covered by Section 33(2) of the Industrial Disputes Act and no application was necessary for approval of the management's action.

4. This question has been considered by me in Misc. Applications Nos. 10, 11, 12, 13, 14 and 15 of 1964 and in view of the Rulings of the Supreme Court in the cases of (1) Upper Ganges Valley Electricity Supply Company, Ltd., Vs. Srivastava, 1963 1 LLJ 237 and (2) Digwadih Colliery Vs. Ramji Singh, 1964 II LLJ 143, I am satisfied that the present applicant cannot be said to be a workman concerned in Reference No. 45 of 1964. That being so, the employers have not committed a breach of Section 33(2) of the Industrial Disputes Act by dismissing him during the pendency of the above Reference without asking for the approval of this Tribunal. The application therefore fails and is dismissed.

I pass my award accordingly.

Sd./- L. P. DAVE.

Presiding Officer.

Dated, the 3rd December, 1964

[No. 6/58/64-LR-II-I.]

S.O. 4358.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Mouthdih Colliery, P.O. Dishergarh, Burdwan and their workmen which was received by the Central Government on the 7th December, 1964.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE No. 54 OF 1964

PARTIES:

Employers in relation to the Mouthdih Colliery,

AND

Their workmen.

PRESENT:

Shri L. P. Dave—*Presiding Officer.*

APPEARANCES:

On behalf of Employers—Shri Ramesh Chandra Thaker.*On behalf of Workmen*—Shri Madhu Banerji, Genl. Secy. West Bengal Khan Mazdur Sangha.

STATE : West Bengal.

INDUSTRY : Coal Mines.

AWARD

The Government of India, Ministry of Labour and Employment, by their Order No. 6/62/64-LR.II dated 22nd August 1964, have referred the industrial dispute existing between the employers in relation to the Mouthdih Colliery and their workmen in respect of the question whether the management of the Mouthdih Colliery was justified in stopping all the workmen from work in the mine with effect from 15th June 1964 and if not, to what relief the workmen were entitled, for adjudication to this Tribunal.

2. When the matter came up for hearing before me to-day, the parties stated that they had settled the dispute without going into the merits of the respective cases and produced a memorandum of settlement, copy appended herewith. The dispute relates to the stoppage of work of workmen from the colliery. Under the terms of compromise, all the workmen excepting 14 persons specified in the compromise have already been allowed to join their duties with continuity of their services. These 14 people have not so far joined and the question as to whether they should be allowed to join has been left to the discretion of the management; but the rest who have joined are to have continuity of service, the period of their absence being treated as leave without pay. All the workmen even including the above 14 persons are to be each paid Rs. 40/- within 3 months from the date the award becomes enforceable. In my opinion, the compromise is fair and reasonable and I accept it.

I therefore pass an award in terms thereof.

(Sd.) L. P. DAVE,
Presiding Officer.

Dated, the 3rd December, 1964.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
CALCUTTA

REFERENCE No. 54 OF 1964

Employers in relation to Mouthdih Colliery.

AND

Their Workmen.

The humble petition of the employers above named and their workmen-represented by West Bengal Khan Mazdoor Sangha (U.T.U.C.) Chinakuri most respectfully sheweth:—

1. That without going into the merits of their respective cases the parties have settled the above reference on the following terms:—

- (a) All Workmen whose names have been given in the list (Annexure 'A' of this petition) will each be paid Rs. 40/- as exgratia payment. No other workmen was stopped from work in the Colliery.
- (b) The above payment will be made within three months from the date the award becomes enforceable.
- (c) That the period of unemployment of all the workers named in Annexure 'A' excluding sarvasree (1) Ram Majhi, (2) Ismail Mia, (3) Becha Dnobi, (4) Probhunath Show, (5) Lalul Kole, (6) Sanatan Bouri, (7) Monilal Maji, (8) Taher Mia, (9) Mongala Hembram, (10) Shyam Bouri, (11) Sabu Bouri, (12) Ramnath Bouri, (13) Darbari Rajak, (14) Abala Pramanik from 15th June 1964 till their date of resumption of duty shall be treated as leave without pay for the purpose of continuity of the service.
- (d) That the question of taking in employment of Sarvasree (1) Ram Majhi, (2) Ismail Mia, (3) Becha Dnobi, (4) Probhunath Show, (5) Lalji Koli, (6) Sanatan Bouri, (7) Monilal Majhi, (8) Taher Mia, (9) Mongla Hembram, (10) Shyam Bouri, (11) Sabu Bouri, (12) Ramnath Bouri, (13) Darbari Rajak, (14) Abala Pramanik who have not yet resumed their duties will be at the discretion of the management.
- (e) That the workmen will have no further claim against the management in respect of any matter arising out of the instant reference.

(f) All the workmen except 14 (fourteen) mentioned in clause (d) above have joined their duty with continuity of their Services.

The parties therefore pray that the learned Tribunal be pleased to accept this petition of compromise and dispose of the reference accordingly.

And as in duty bound, the parties shall ever pray.

MADHU BANERJI,

Secretary.

West Bengal Khan Mazdoor Sangha.

(Representing Workmen).

Dated the 3rd December 1964.

(Sd.) Illegible,

Partner.

Mouthdih Coal Co., Mouthdih Colliery.

(Representing Employers).

'ANNEXURE'—A

1. Sri Ram Majhi.
2. Sri Ismail Mia.
3. Sri Rasik (2) Majhi.
4. Sri Harka Majhi.
5. Sri Dukhu Majhi.
6. Sri Rabi(3) Majhi.
7. Sri Ramadhur Kolri.
8. Sri Rajdeo Harijan.
9. Sri Becha Harijan.
10. Sri Brinda Jadab.
11. Sri Rammurath Jacob.
12. Sri Motichanda Bhar.
13. Sri Bramdeo Kurmi.
14. Sri Becha Dhobi.
15. Sri Girjaprasad.
16. Sri Prabunath Show.
17. Sri Lakhiram Majhi.
18. Sri Lubin Majhi.
19. Sri Thakur Majhi.
20. Sri Sambhu(3) Majhi.
21. Sri Some Murmu.
22. Sri Choto(1) Majhi.
23. Sri Suku(1) Majhi.
24. Sri Shyamlal Majhi.
25. Sri Mathla(2) Majhi.
26. Sri Babulal Majhi.
27. Sri Parmeswar Majhi.
28. Sri Laljee Kole.
29. Sri Ajodhye Kole.
30. Sri Lahaju Jadab.
31. Sri Sibraram Jadab.
32. Sri Nagarset.
33. Sri Sanatan Bouri.
34. Sri Mongla Tudu.
35. Sri Suku Saren.
36. Sri Rasik(3) Majhi.
37. Sri Birbal Majhi.
38. Sri Chanda Kisku.
39. Sri Suna(1) Majhi.

40. Sri Bijoy Majhi.
41. Sri Mongla (3) Majhi.
42. Sri Chandra Majhi.
43. Sri Some(1) Majhi.
44. Sri Choto(2) Majhi.
45. Sri Mondal Majhi.
46. Sri Rabi(2) Majhi.
47. Sri Monilal Majhi.
48. Sri Lakhiram Hesda.
49. Sri Rameswar Kole.
50. Sri Suku(4) Majhi.
51. Sri Bhutel Majhi.
52. Sri Sambhu(2) Majhi.
53. Sri Sitaram(1) Majhi.
54. Sri Sru Majhi.
55. Sri Lakhiram Maddi.
56. Sri Tahir Mia.
57. Sri Mongla Hembram.
58. Sri Choto Rorau.
59. Sri Lakhinarayan Hasda.
60. Sri Rasik(1) Majhi.
61. Sri Bunela Gope.
62. Madhusudan Haji.
63. Sri Kali Gope.
64. Sri Sasa Bouri.
65. Sri Bibaran Gope.
66. Sri Kalo Majhi.
67. Sri Monabodh Dome.
68. Sri Koil Dome.
69. Sri Bhakti Das.
70. Sri Charan Gosai.
71. Sri Dugei Gope.
72. Sri Tarapada Majhi.
73. Sri Kanai Santra.
74. Sri Nepal Majhi.
75. Sri Shyam Dome.
76. Sri K. P. Mondal.
77. Sri Kirtan Majhi.
78. Sri Bhabararan Karmakar.
79. Sri Amulla Bhandari.
80. Sri Gopal Dutta.
81. Sri Debranjana Banerjee.
82. Sri Das Bouri.
83. Sri Shyama Bouri.
84. Sri Ananda Maji.
85. Sri Radhu Ghosh.
86. Sri Haradhan Maji.
87. Sri Sabu Bouri.
88. Sri Kutra Bouri.
89. Sri Labai Maji.
90. Sri Bhutu Bag.
91. Sri Sadhan Munchi

92. Sri Sankar Maji.
93. Sri Deben Maji.
94. Sri Gora Mallick.
95. Sri Amulla Dome.
96. Sri Manik Maji.
97. Sri Basudeb Maji.
98. Sri Bharat Maji.
99. Sri Kallash Karmakar.
100. Sri Basudeb Roy.
101. Sri Khoku Maji.
102. Sri Akul Maji.
103. Sri Balaram Chakravarty.
104. Sri Habu Bourl.
105. Sri Malinda Maji.
106. Sri Mathura Rajak.
107. Sri Gopal Jhal.
108. Sri Kalidas Majhi.
109. Sri Ramnath Bourl.
110. Sri Kurban Mia.
111. Sri Ludha Bourl.
112. Sri Dukhu Bourl.
113. Sri Singhasan Gope.
114. Sri Darbari Rajak.
115. Sri Mahangu Din.
116. Sri Dibakar Majhi.
117. Sri J. Bhattacharjee.
118. Sri R. Karmakar.
119. Sri Debidas Banerjee.
120. Sri Fucha Bourl.
121. Sri Sibbu Kole.
122. Sri Ludha Bourl.
123. Sri Rashu Bourl.
124. Sri Lakhiram Maji.
125. Sri Some Majhi.
126. Sri Gobardhan Majhi.
127. Sri Basu Bourl.
128. Sri Sanatan Majhi.
129. Sri Budha Bourl.
130. Sri Gora Bourl.
131. Sri Sasa Bourl.
132. Sri Joti Bourl.
133. Sri Suklal Dome.
134. Sri Habula Dome.
135. Sri Naran Dhibar.
136. Sri Anil Pramanik.
137. Sri Manik Roy.
138. Sri Kuran Banerjee.
139. Sri Dulal Ghosal.
140. Sri Bishu Dhibar.
141. Sri Surendra N. Dhibar.
142. Sri Kamakshya Neogi.
143. Sri Shyam Chatterjee.
144. Sri Abala Pramanik.

ORDERS

New Delhi, the 16th December 1964

S.O. 4359.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Khas Joyrampur Colliery of Messrs Khas Joyrampur Colliery Company Private Limited, (Post Office Jharla, District Dhanbad) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

- (1) Whether the action of the management of Khas Joyrampur Colliery of Messrs Khas Joyrampur Colliery Company Private Limited in transferring Shri Ramkeswar Singh from the post of Underground Munshi to the post of Surface Tub Checker with effect from the 13th July, 1964, was an act of victimisation.
- (2) If so, to what relief is the workman entitled?

[No. 2/129/64-LR-II.]

S.O. 4360.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Singareni Collieries Company Limited, Kothagudum Collieries P.O. and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Dr. Mir Siadat Ali Khan as the Presiding Officer with headquarters at Somajiguda, Hyderabad, and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE

- (1) Whether in the light of the duties performed by and the responsibilities imposed on Sri K. Jacob, Cook, Main Hospital, Kothagudum, the management of Singareni Collieries Company Limited is justified in not allowing him the grade of Head Cook (*viz.*, Rs. 43 to 82)?
- (2) If not to what relief is the workman entitled and from which date?

[No. 7/30/64-LR.II.]

New Delhi, the 17th December 1964.

S.O. 4361.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Bhatdee Colliery of Messrs Bengal Bhatdee Coal Company Limited (P. O. Mohuda, District Dhanbad), and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of the Bhatdee Colliery of Messrs Bengal Bhatdee Coal Company Limited in suspending Shri Biswanath Singh, Guard, and Shri B. Nasir Shaw, Body Searcher, for ten days from the 6th August, 1964 to the 15th August, 1964 amounts to an act of victimisation? If so, to what relief are the workmen entitled.

[No. 2/136/64-LR.II.]

S.O. 4362.—Whereas the Central Government is of opinion that an industrial dispute exists between the employees in relation to the Samla Colliery, P.O. Pandaveswar, Burdwan and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Calcutta, constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of Samla Colliery of M/s. Samla Collieries Ltd., in dismissing their workmen Sarvashri Rampat Jayeswara, Lachman Jayeswara and Biswanath Jayeswara from service was justified? If not, to what relief are these workmen entitled?

[No. 6/99/64-LRII.]

S.O. 4363.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Chinakuri No. 3 Pit Colliery of M/s. Bengal Coal Company Ltd., P.O. Dishergarh, Burdwan and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Calcutta, constituted under section 7A of the said Act.

SCHEDULE

Whether the dismissal of Sri Islam Khan, Mechanical Fitter of Chinakuri No. 3 Pit Colliery by the management was justified? If not, to what relief is he entitled?

[No. 6/107/64-LRII.]

New Delhi, the 18th December 1964

S.O. 4364.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Singareni Collieries Company Limited, Kothagudium Division, Kothagudum, Andhra Pradesh, and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Dr. Mir Siadat Ali Khan as the Presiding Officer with headquarters at Somajiguda, Hyderabad, and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE

Whether the management of Singareni Collieries Company Limited is justified in treating Shri Mohd. Mansoor Ali, Fan Driver No. 2 Incline, Kothagudium Collieries, as an absconder and denying the lien in his appointment as Fan driver from the 18th October, 1963 and then taking him back in employment as Hauler Driver with effect from the 2nd March, 1964 as a fresh candidate without continuity of service? If not, to what relief is the workman entitled and from what date?

[No. 7/31/64-LR.II.]

New Delhi, the 19th December 1964

S.O. 4365.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the North Jhagrakhand Colliery, P.O. Jhagrakhand, Distt. Sarguja, M.P. and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Bombay, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of North Jhagrakhand Colliery of Jhagrakhand Collieries (P) Ltd. were justified in dismissing from service (1) Shri Ram Das s/o Sukhram and (2) Shri Peary Ahir, Mines? If not, to what relief are the workmen entitled?

[No. 5/24/64-LR.II.]

H. C. MANGHANI, Under Secy.

New Delhi, the 17th December 1964

S.O. 4366.—In exercise of the powers conferred by sub-section (3) of section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), the Central Government hereby appoints Shri T. C. Varkey as a member of the Cochin Dock Labour Board vice Shri D. B. Khona, to represent the Overseas Shipping Interests and makes the following further amendment in the notification of the Government of India in the Ministry of Labour and Employment No. S.O. 3432 dated the 21st September, 1964, namely:—

In the said notification, under the heading "*Members representing the employers of dock workers and shipping companies*", in the entries relating to item (4), for the entry "Shri D. B. Khona", the entry "Shri T. C. Varkey" shall be substituted.

[No. 527/29/64-Fac.]

K. D. HAJELA, Under Secy.

New Delhi, the 17th December 1964

S.O. 4367.—In pursuance of sub-section (4) of section 3 of the Mica Mines Labour Welfare Fund Act 1946 (22 of 1946), the Central Government hereby publishes the following report of the activities financed from the Mica Mines Labour Welfare Fund during the year ending with the 31st March, 1964, together with a statement of accounts for that year and an estimate of receipts and expenditure of the said Fund for the year 1964-65.

PART I—GENERAL

The Mica Mines Labour Welfare Fund constituted under the Mica Mines Labour Welfare Fund Act, 1946 (22 of 1946), is intended to provide educational, recreational and other welfare amenities to the labour employed in the mica mining industry.

The Act provides for the levy of a duty of customs on all mica exported from India upto a maximum rate of 6½ per cent. *ad valorem*. The present rate is 2½ per cent.

The collections are allocated for expenditure on welfare measures among the various Mica-producing areas in proportion to their average production.

The following welfare measures have so far been undertaken in Bihar, Andhra Pradesh and Rajasthan:—

(i) *Improvement of medical facilities.*—

- (a) *Hospitals*—A 100-bed Central Hospital at Karma (Bihar), a 15-bed Hospital at Tisri (Bihar) and a 14-bed Hospital at Kalichedu (Andhra Pradesh) continued to be maintained from the resources of the Fund. The construction of the 30-bed Hospital at Gangapur (Rajasthan) was completed and the outpatient department has started functioning. A 50-bed T.B. Hospital at Karma (Bihar) started functioning in October, 1963. A 12-bed T.B. clinic at Tisri is under construction and work on a 16-bed T.B. Ward attached to the hospital at Kalichedu would begin shortly.

- (b) *Other Medical facilities*—Other medical institutions set up from the finances of the Fund comprise 5 static dispensaries, 3 mobile medical units, 3 ayurvedic dispensaries, 5 maternity and child welfare centres

and 5 community centres in Bihar; 3 static dispensaries, one mobile dispensary, 1 ayurvedic dispensary and 4 maternity centres in Andhra Pradesh; and 9 dispensary-cum-maternity and child welfare centres, 5 mobile medical units, 12 ayurvedic dispensaries and 4 multipurpose centres in Rajasthan.

A Health promotion Centre at Dhorakola in Mica fields of Bihar has been established. The Centre attends to the periodical medical check-up of mica miners and their families for detection of diseases (occupational or otherwise) in the early stages.

Ten beds in the T.B. Sanatorium at Ranchi and eleven beds in T.B. Hospital, Nellore have been reserved for the exclusive use of mica miners and their families. Arrangement has been made for the treatment at the Tetulmari Leprosy Hospital of mica miners of Bihar who suffer from leprosy. The Fund makes grants-in-aid to these institutions for the reservation of beds.

(c) *Assistance to T.B. Patients*—A subsistence allowance at Rs. 50 p.m. is being granted to the dependents of mica miners who are under treatment in the T.B. Ward attached to the Central Hospital, Karma or at the T.B. Sanatorium, Ranchi. The Scheme of domiciliary treatment of T.B. and silicosis patients was also continued. The patients attending the out-door department of T.B. Hospital, Nellore were granted travelling allowance. A Rehabilitation-cum-convalescence Home set up in Bihar for workers cured of T.B. continued to function.

(d) *Training*.—The mica miners in Andhra Pradesh are being trained in first aid.

(ii) *Educational facilities*.—Seven multipurpose institutes, each with an Adult Educational Centre and a Women's Welfare Centre, provide educational and recreational facilities to workers in Bihar. Training in handicrafts like sewing and knitting is given to women attending the Centres. Each institute serves as a training-cum-production Centre. One Community Centre is functioning in Andhra Pradesh where male workers learn carpentry in their leisure time. In two women's centres in Andhra Pradesh and eight centres in Rajasthan, girls and women workers are taught tailoring, stitching, etc. Educational facilities for miners' children are being provided in 5 primary schools, 2 middle schools, 7 community centres and 6 feeder centres in Bihar; 2 primary schools, one middle school and 22 adult educational centres in Rajasthan; and 6 primary schools, one High School and one Middle School in Andhra Pradesh.

In all the schools in Andhra Pradesh, children are provided with facilities like free mid-day meals, milk, books, slates, clothing, bags and chappals. Milk and snacks are provided to the miners' children attending the multipurpose institutes in Bihar. Mid-day meals, books, slates and other stationery articles are supplied to the school-going children of mica miners in Rajasthan.

Three boarding houses in Bihar and two in Andhra Pradesh are being run for the children of mica miners studying in schools and colleges.

Scholarships are granted to the children of mica miners studying in schools and colleges in Bihar and Rajasthan. Such scholarships are granted for both general and technical education.

(iii) *Recreational facilities*.—Three mobile cinema units, two in Bihar and one in Rajasthan, give free shows in different mining centres; 18 Radio sets in Bihar; 18 in Andhra Pradesh and 25 in Rajasthan provide recreation to mica miners and their families. In Bihar the recreational facilities are provided at Multi-purpose, Community and Feeder Centres. Out-door and in-door recreational facilities are also provided at the centres and sub-centres in Rajasthan. Bhajan parties and recreational clubs have also been set up in different mining areas.

(iv) *Drinking water facilities*.—29 wells (25 in Bihar and 4 in Andhra Pradesh) have been constructed by the Fund. Eleven additional wells (three in Bihar and eight in Andhra Pradesh) have been sunk under the Subsidy equal to which the mine owners who sink wells get a subsidy equal to Rs. 7,500 per well or 75 per cent of the cost of construction, whichever is less. The construction of four more wells under this scheme is in progress in Andhra Pradesh. Three wells are being

sunk in Rajasthan through Zilla Parishads and 90 per cent of the cost of these wells will be met from the Fund. A dam has also been constructed in Bihar.

(v) *Housing Facilities—*

- (i) *Low Cost Housing Scheme.*—As there was no response to the various earlier housing schemes introduced from 1953, a low-cost housing scheme for construction of 300 low cost houses costing about Rs. 1,300 each, was sanctioned in July, 1962, for Bihar region. The houses constructed at the cost of the Fund will be handed over to mine owners who, besides being responsible for their maintenance, will pay a nominal rent of Re. 1 to Rs. 2 per month per house and allot the houses free of rent to the mica miners.
- (ii) *Departmental Colonies.*—In addition to the above scheme, construction of two departmental colonies of 50 houses each, (each house costing Rs. 2,500) was sanctioned in Bihar at the cost of the Fund. One of these is nearing completion. Nine more similar colonies containing 264 houses in all are proposed to be built in Bihar. These houses will be let out to mica miners free of rent through mine owners who will pay a nominal rent to the Fund.
- (iii) *'Build Our Own House' Scheme.*—The scheme envisages financial assistance in the form of cash or building material to the mica miners to the extent of Rs. 325 for the purpose of improving their village houses. Technical assistance in the matter will be provided by the Fund. Five hundred houses have been sanctioned under the Scheme for Bihar.
- (iv) *Financial help in case of accidents.*—The Scheme relating to the grant of financial assistance from the Fund to the widows and children of mica miners who die as a result of accidents was continued.
- (v) *Consumers' Cooperative Stores.*—One whole sale and ten primary Consumers' Cooperative Stores for Bihar and four primary consumer's cooperative stores for Andhra Pradesh, were sanctioned with the assistance of the Fund. These stores will supply consumers' goods at reasonable prices to the mica mining population.

PART II.—Statement of accounts for the year 1963-64.

Receipts		Expenditure*	
	Rs.		Rs.
Opening balance on the 1st April 1963	1,97,48,611	Andhra Pradesh	4,33,296
		Bihar	24,15,194
		Rajasthan	4,68,460
		Closing balance	1,92,60,131
*Receipts during the year	28,28,470		
TOTAL	2,25,77,081	TOTAL	2,25,77,081

*Provisional figures.

PART III.—†Estimates of Receipts and Expenditure 1964-65

Receipt Expenditure	27,00,000
Andhra Pradesh	6,93,000
Bihar	25,03,000
Rajasthan	10,42,000
	42,38,000

†Accepted for Budget estimates for 1964-65

[No. 23(20)/64-M III]

New Delhi, the 18th December 1964

S.O. 4368.—In exercise of the powers conferred by sub-section 1 of section 5 of the Mines Act, 1952 (35 of 1952) the Central Government hereby appoints Shri A. C. Nag as Inspector of Mines subordinate to the Chief Inspector of Mines and makes the following further amendment in the notification of the Government of India in the Ministry of Labour and Employment S.O. 531 dated the 2nd March, 1961, namely:—

In the said notification, the following entry shall be added at the end, namely:—

“(69) Shri A. C. Nag.”

[No. 8/63/62-MI.]

R. C. SAKSENA, Under Secy.

New Delhi, the 19th December 1964

S.O. 4369.—In exercise of the powers conferred by sub-section (2) of section 5 of the Minimum Wages Act, 1948 (11 of 1948), and after considering the advice of the Committee constituted under clause (a) of sub-section (1) of the said section, the Central Government hereby revises the minimum rates of wages fixed under the said Act for the following categories of employees employed in agriculture at (i) the Vegetable Breeding Sub-station, Indian Agricultural Research Institute, Kulu Valley, P.O. Katrain, District Kulu, Punjab and (ii) the Southern Regional Station of the National Dairy Research Institute, Bangalore, specified in the Schedule annexed hereto and directs that this notification shall come into force on the 20th January 1965.

SCHEDULE

Categories of employees

All inclusive minimum rate of wages per day

(i) *Vegetable Breeding Sub-station, Kulu Valley.*

(1) Unskilled Worker (Male) .. Rs. 2.00

(2) Unskilled Worker (Female) .. Rs. 1.75

(ii) *Southern Regional Station of the National Dairy Research Institute, Adugodi, Bangalore.*

Men/Women mazdoors. .. Rs. 2.25

[No. LWI(16(3)/64.]

S.O. 4370.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 3 of the Minimum Wages Act, 1948 (11 of 1948), and after considering the advice of the Committee constituted under clause (a) of sub-section (1) of section 5 of the said Act, the Central Government hereby revises the minimum rates of wages payable to certain categories of employees employed in agriculture at the Vegetable Breeding Sub-station, Indian Agricultural Research Institute, Kulu Valley, P.O. Katrain, District Kulu, Punjab, specified in the Schedule annexed hereto, and directs that this notification shall come into force on 20th January, 1965.

SCHEDULE

Categories of employees

All inclusive minimum rates of wages per day.

1. Semi-skilled male workers ... Rs. 2.50.

2. Skilled male workers (Carpenter, Blacksmith) ... Rs. 4.50.

[No. LWI(16(3)/64.]

R. M. DOIPHODE, Dy. Secy.

